Supreme Court, U.S.
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In The

Supreme Court of the United States

H. BEATTY CHADWICK,

Petitioner,

v.

BARBARA JEAN CROWTHER CHADWICK,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether clearly established federal law as determined by this Court renders it reasonable to conclude that the due process clause places no limitation upon the length of time a person may be incarcerated for civil contempt?

2. Whether clearly established federal law as determined by this Court renders it reasonable to conclude that procedural due process does not demand a Sixth Amendment jury trial at which the state bears an unshifting burden of proof beyond a reasonable doubt before a person may be incarcerated for five or more years for contempt, regardless of whether the contempt be labeled criminal or civil?

3. Whether a habeas corpus reviewing court should make a de novo review of the Record where it rests its decision on state court fact finding challenged under 28 U.S.C. § 2254(d)(2) and the District Court did not hold an evidentiary hearing?

4. Whether and under what circumstances the standard of review set forth in 28 U.S.C. § 2254(d)(1) applies where the state court denies relief without explanation or opinion?

5. Whether a private party has Article III standing to appeal the grant of a writ of habeas corpus where no state respondent has appealed?

LIST OF PARTIES TO THE PROCEEDINGS IN THE COURT BELOW

H. Beatty Chadwick,

Appellee Below

James Janecka, Warden, Delaware County Prison*

District Attorney of the County of Delaware (Pennsylvania)*

The Attorney General of the State of Pennsylvania**

Barbara Jean Crowther Chadwick,

Appellant Below.

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* Respondent in District Court, but did not file notice of appeal to Court of Appeals and was not a party before that Court.

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PETITION FOR A WRIT OF CERTIORARI

H. Beatty Chadwick, the Petitioner, respectfully prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit, entered in the above-entitled case on August 20, 2002, a petition for rehearing having been denied on December 4, 2002.

OPINIONS BELOW

The December 4, 2002 opinion of the United States Court of Appeals for the Third Circuit, whose judgment is herein sought to be reviewed, is reported at 312 F.3d 597 and is attached as Appendix A. The prior opinion of the United States District Court for the Eastern District of Pennsylvania entered January 4, 2002 is unreported and is attached as Appendix B.

JURISDICTION

Jurisdiction is conferred upon this Court by 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

This case involves the following provisions of the United States Constitution:

Amendment Six:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an

impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

Amendment Fourteen, Section 1:

All persons born or naturalized in the United States, and subject to the jurisdiction of the United States, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Also involved are the provisions of 28 U.S.C. § 2254(d):

(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim –

(1) resulted in a decision that was contrary to, or involved an unreasonable application of clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the

facts in light of the evidence presented in the State court proceeding.

STATEMENT OF THE CASE

Petitioner H. Beatty Chadwick has been imprisoned since April 5, 1995 for "civil" contempt of an order that he deposit $2.5 million in an account controlled by the Delaware County (Pennsylvania) Court of Common Pleas, for eventual equitable distribution in a divorce action.

On January 3, 2002 the United States District Court for the Eastern District of Pennsylvania issued a Writ of Habeas Corpus and ordered Mr. Chadwick released from confinement. The District Court stayed its Order for 30 days to allow any party respondent to appeal. Barbara Chadwick, Mr. Chadwick's former wife and an Intervenor in the District Court, filed an appeal on January 15, 2002. No notice was filed on behalf of any of the three original respondents – the Warden, the District Attorney (who had been dismissed as a party respondent at his request on April 23, 2001) or the state Attorney General. The United States Court of Appeals for the Third Circuit granted a stay pending appeal at Mrs. Chadwick's request. On August 20, 2002 the Court of Appeals reversed the judgment of the District Court which had granted the Writ. Mr. Chadwick's request for rehearing was denied on December 4, 2002 (Chief Judge Becker would have granted rehearing). The Court of Appeals did, however, file an amended opinion, which is attached as Appendix A.

Mr. Chadwick's imprisonment arises from an order of the Court of Common Pleas of Delaware County, Pennsylvania in a divorce action commenced on November 23, 1992. On July 22, 1994, at Mrs. Chadwick's request, the

state trial court (Joseph Labrum, J.) directed Mr. Chadwick to pay $2,500,000 in cash into a bank account under the control of the state court, presumably so the money would be available for distribution in the divorce proceeding, although no distribution proceeding had been had as of that or the present date.[1] This sum was the major part of a $2,502,000 investment made by Mr. Chadwick nearly eighteen months before the state court order under the terms of a joint venture agreement between Mr. Chadwick and Maison Blanche, Limited, a Gibraltar corporation, entered into in August, 1990. Mr. Chadwick maintains that he possesses the investment interest, but was then and still is unable to reclaim the cash.

On August 29, 1994, based upon Mrs. Chadwick's petition, the trial court adjudicated Mr. Chadwick in contempt. No sanction was imposed. On October 18, 1994, the trial court, on it own motion, notified Mr. Chadwick that a hearing on a "petition for contempt" would be held on October 31, 1994. No such petition was filed however, and no additional information was given as to the purpose of the proposed hearing. On October 31, 1994, following a proceeding in court at which Mr. Chadwick was not present, the trial court again adjudicated Mr. Chadwick in contempt of its July 22, 1994 order. By order dated November 2, 1994, the court directed that Mr. Chadwick be arrested and imprisoned indefinitely, "until a further hearing is held." No condition was stated upon the performance of which Mr. Chadwick would be released. It is under this order that Mr. Chadwick remains incarcerated.

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[1] The parties were granted a bifurcated divorce on November 14, 2001, but property distribution issues remain to be determined.

No trial was held and no trial by jury was offered. The record is devoid of evidence that Mr. Chadwick then had the cash resources, or any resources readily convertible into cash, that could satisfy the trial court's payment order. No findings of fact or conclusions of law were filed. Mr. Chadwick appealed both the order of July 22, 1994 and the order of November 2, 1994 which directed his imprisonment, but the state Superior Court, at the request of Mrs. Chadwick, quashed these appeals as the orders were deemed interlocutory.

On March 24, 1995 Mr. Chadwick filed a petition to vacate the sanction of imprisonment in the November 2, 1994 order. A hearing on this petition was held on April 20, 1995. In the meantime, on April 5, 1995, Mr. Chadwick was arrested and imprisoned. Mr. Chadwick was not permitted to be present at the April 20, 1995 hearing, and the petition to vacate was denied.

Thereafter, on June 21, 1995 Mr. Chadwick filed the first of seven habeas corpus petitions with the state trial court. Mrs. Chadwick was permitted, over objection, to participate in these proceedings. Each of these (except the last) was heard by Judge Battle rather than Judge Labrum, and each was denied. No evidence was presented as to Mr. Chadwick's financial resources or his ability to make the payment that the court demanded, apart from Mr. Chadwick's statement of inability to do so. However, in connection with appeals of certain of those rulings Judge Battle wrote opinions summarizing as "facts" the unproven allegations by Mrs. Chadwick that Mr. Chadwick continued to control the cash paid to Maison Blanche, Limited, including allegations that monies had been deposited by or for Mr. Chadwick in bank accounts in the United States, Switzerland and Panama. Not only had Judge Battle heard no evidence on any of these "facts,"

there was no substantive support for them in the evidentiary record.

When the state trial court denied habeas corpus relief on October 5, 1995, after Mr. Chadwick had been imprisoned for six months, he filed an appeal with the state Superior Court, arguing that his imprisonment was unlawful on various state law grounds and that his Fourteenth Amendment rights to due process and equal protection had been infringed. The Superior Court did not discuss the federal Constitutional grounds but affirmed the trial court's orders on August 22, 1996, applying a standard of review that accepted Judge Battle's conclusions, including the unsupported "facts" as to Mr. Chadwick's ability to comply, in the absence of proof of "bias, prejudice or ill will." Mr. Chadwick petitioned the state Supreme Court for allowance of appeal based upon errors in the burden of proof and other state law grounds and based upon the failure of the Superior Court to address the federal Constitutional issues raised there. The state Supreme Court denied discretionary review on April 8, 1997. This Court denied certiorari. *Chadwick v. Andrews*, 522 U.S. 864 (1997).

While this appeal was pending, Mr. Chadwick filed a new petition for writ of habeas corpus, his sixth, with the state trial court. No additional evidence as to Mr. Chadwick's ability to comply apart from his own disclaimer was presented. The trial court denied the petition in June, 1996. This denial was appealed to the state Superior Court which again affirmed the trial court's denial on April 23, 1997, declining to recognize a due process rule that lengthy "civil" contempt could become "criminal" in the Constitutional sense because the state Supreme Court had never ruled on the permissible length of imprisonment for a civil contempt. The Superior Court

also deferred as before to the trial court's conclusions as to ability to comply and the continuing coercive effect of the imprisonment. Mr. Chadwick did not file a petition for allowance of appeal with the state Supreme Court inasmuch as that court had denied a petition on similar grounds only fifteen days previously.

Mr. Chadwick then sought habeas corpus relief in the U.S. District Court for the Eastern District of Pennsylvania. On April 30, 1998 that court denied Mr. Chadwick's petition for lack of exhaustion of state remedies. Under the circumstances, the District Court suggested that the federal Constitutional claims again be presented to the state Supreme Court and indicated several means by which that could be accomplished, including a petition for writ of habeas corpus under the state Supreme Court's original jurisdiction provided by statute. Mr. Chadwick filed such a petition on September 27, 1999, setting forth nine violations of due process rights safeguarded by the Fourteenth Amendment. He also filed an application for permission to file the petition as required by the state Rules of Appellate Procedure. Mrs. Chadwick sought to intervene and filed a proffered Answer. On February 8, 2000 the state Supreme Court granted Mr. Chadwick's application for permission to file the petition and granted Mrs. Chadwick's motion to intervene and to file an Answer. The state Supreme Court then denied the habeas corpus petition without explanation or opinion.

Mr. Chadwick filed the Petition for Writ of Habeas Corpus at issue in this case under the provisions of 28 U.S.C. § 2254(a) on March 2, 2000, asserting the same nine federal Constitutional claims presented in the petition which had just been denied by the state Supreme Court, that he had been denied due process of law: (i) by imprisonment for noncompliance with an order with which

he was unable to comply; (ii) since he was not afforded a jury trial and other procedural rights; (iii) by the summary nature of the proceedings which adjudicated his imprisonment; (iv) by imposing imprisonment which has become punitive; (v) by imprisonment for the nonpayment of money; (vi) by indefinite imprisonment in a civil proceeding; (vii) since the order of imprisonment fails to contain a condition for his release; (viii) by imprisonment for the alleged violation of an order the Court lacked jurisdiction to issue; and (ix) because he was not afforded a prompt appeal of the state contempt and imprisonment order. The District Attorney of Delaware County filed a response which included the admission that Mr. Chadwick's incarceration "now borders on the extreme." Mrs. Chadwick was permitted to intervene and filed a motion to dismiss based upon an alleged failure to exhaust state remedies. No evidentiary hearing was held. On December 11, 2000, a Magistrate Judge issued a report and recommendation which found that exhaustion of state remedies had occurred, but recommended dismissal of the petition on the merits, and Mr. Chadwick filed exceptions.

After oral argument the District Court on January 3, 2002 sustained Mr. Chadwick's exceptions to the report of the Magistrate Judge and granted the petition for writ of habeas corpus on the ground that his imprisonment had become impermissibly punitive and thus a violation of his due process rights. Mrs. Chadwick appealed to the United States Court of Appeals for the Third Circuit; none of the Respondents did so. Thereafter, the Attorney General of Pennsylvania filed an amicus brief, although he had not participated in the proceedings before the District Court and could have, but did not, file a notice of appeal. The Court of Appeals on August 20, 2002 reversed the judgment of the District Court because, after applying the standards set forth in 28 U.S.C. § 2254(d)(1), it concluded

that this Court had never held that the due process clause limits the length of time a person may be confined for civil contempt, and therefore the refusal of the state court to release Mr. Chadwick notwithstanding his lengthy imprisonment would not be unreasonable.

REASONS FOR GRANTING THE WRIT

The judgment of the United States Court of Appeals for the Third Circuit should be reviewed by this Court because the Court of Appeals has decided certain issues in this case which implicate important questions of federal law in respect to the application and interpretation of 28 U.S.C. § 2254(d) which have not been but should be settled by this Court.

1. CERTIORARI SHOULD BE GRANTED TO SETTLE WHETHER THE STANDARD OF REVIEW SET FORTH IN 28 U.S.C. § 2254(d)(1) CAN OR SHOULD BE APPLIED WHERE THE STATE COURT DECISION AT ISSUE DENIES RELIEF WITHOUT EXPLANATION OR OPINION.

In this case the decision of the Pennsylvania Supreme Court at issue (Appendix C) denied Mr. Chadwick's claims for relief without any reasons or explanation or any indication that it had addressed the federal issues, although nine separate grounds, had been urged before that court. The Court of Appeals held (Appendix A, p.12) that the § 2254(d)(1) standard of review applied to Mr. Chadwick's habeas corpus petition.

The Court of Appeals concluded (Appendix A, pp.14-15) that its holding was required by the decision of this Court in *Weeks v. Angelone*, 528 U.S. 225 (2000). The issue

of the proper standard of review, however, was not implicated in *Weeks*. This Court's entire pertinent discussion in *Weeks*, after analyzing extensively what it considered to be the correct disposition of the petitioner's claims, was in one conclusory paragraph ending "for the reasons stated above, it follows *a fortiori* that the adjudication of the Supreme Court of Virginia affirming Petitioner's conviction and sentence neither was 'contrary to' nor involved an 'unreasonable application of' any of our decisions." *Id.* at 237. In other words, having already concluded that the state court's rejection of the petitioner's claims was *correct*, it necessarily followed that the Petitioner could not prevail. In the instant case, the Court of Appeals was persuaded (Appendix A, p.14) that the Fourth Circuit in *Weeks* had stated in *its* opinion that § 2254(d)(1) applied even though the state court had not given reasons for the decision, *Weeks v. Angelone*, 176 F.3d 249, 259 (4th Cir. 2000)[2], and that this Court had affirmed the Fourth Circuit. It reads too much into this Court's opinion in *Weeks,* however, to conclude that this Court in that decision interpreted § 2254(d)(1) as to apply to a state court decision which was only a bare dismissal, without explanation. Even the Fourth Circuit, from which *Weeks* arose, concluded in a subsequent decision that this Court had not reached in *Weeks* the issue of the application of § 2254(d)(1) to summary state court dispositions. *Bell v. Jarvis*, 236 F.3d 149, 161 n.8 (4th Cir. 2000).

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[2] The standard of review was not at issue in the lower court either, as the parties in *Weeks* agreed that § 2254(d)(1) was applicable. *Id.* at 257. Moreover, although the state Supreme Court did not give reasons for its decision it did issue an opinion stating that it had considered all of the arguments presented and concluded that none had any merit. *Id.* at 259.

The statute itself is ambiguous and substantial arguments favor the view that § 2254(d)(1) cannot effectively be applied where the state court decision at issue denied relief, without explanation. By its terms § 2254(d)(1) applies only where the state court has "adjudicated" the federal claims "on the merits," so that, at the very least, the habeas corpus court must be able to ascertain from the state court decision that these conditions have been fulfilled. Moreover, the subsequent analysis required by the Section would be very difficult if not impossible to perform without an indication of the relevant federal precedents considered by the state court. In order for the federal habeas corpus court to determine whether a given state court decision was "contrary to" or an "unreasonable application of" federal law, it would be necessary to "guess" the federal law which formed the basis of the state court decision unless that court provided the precedents it considered. Indeed, the three opinions in *Williams v. Taylor*, 529 U.S. 362 (2000), where this Court first considered the standards to be applied by a habeas corpus court in compliance with § 2254(d)(1), each extensively analyzed the reasoning employed by the state court and did so in ways that would have been impossible if the state court had not identified the federal precedents under which it acted. *Id.* at 394, 395, 397-98 (opinion of Stevens, J.); *Id.* at 414-16 (opinion of O'Connor, J.) and *Id.* at 417-19 (opinion of Rehnquist, C.J.). See discussion in *Washington v. Schriver*, 255 F.3d 45, 53-54, 64 (2nd Cir. 2001). If *Williams v. Taylor* is to be used as a paradigm, at least some explication of the basis for the state court's decision would appear to be a condition for the application of the § 2254(d)(1) standard of review. In a recent *per curiam* decision the Court held that application of the "contrary to" clause of § 2254(d)(1) should not depend upon the citation of federal law by the state court (the state court

had in that case issued an opinion) "so long as neither the reasoning nor the result of the state court decision contradicts them," thus suggesting that some reasoning by the state court is necessary. *Early v. Packer*, ___ U.S. ___, 123 S.C. 362, 365 (2002).

The various Circuits have reflected a variety of approaches to the question. The Third Circuit had decided that the § 2254(d)(1) standard of review did not apply where the state court opinion failed to demonstrate that the federal claims had been considered. *Everett v. Beard*, 290 F.3d 500, 507-08 (3rd Cir. 2002); *Appel v. Horn*, 250 F.3d 203, 209-12 (3rd Cir. 2001); and *Hameen v. Delaware*, 212 F.3d 226, 248 (3rd Cir. 2000). The opinion in the instant case distinguished those decisions because in the instant case the state Supreme Court did not render an opinion at all. (Appendix A, p.15). This appears to be a distinction without logical support, since if a federal habeas corpus court cannot conclude that a federal issue has been addressed where the state court renders an opinion but does not mention the federal issue, it should be at least equally difficult to reach such a conclusion in the absence of any opinion whatsoever.

The Second Circuit has held that § 2254(d)(1) applies to summary state court decisions provided that the state court made an adjudication of the federal issues on the merits. *Sellan v. Kuhlman*, 261 F.3d 303, 312 (2nd Cir. 2001). Subsequent decisions by that Circuit, however, have held that § 2254(d)(1) did not apply where the habeas corpus court could not tell from the state court decision that it was on the merits. *Rudenko v. Costello*, 286 F.3d 51, 69 (2nd Cir. 2002) or if the federal issue was not mentioned by the state court. *Norde v. Keene*, 294 F.3d 401, 410 (2nd Cir. 2002).

The Fourth, Sixth and Ninth Circuits have applied § 2254(d)(1) to cases where there was a summary state court decision, but in such cases have required the habeas corpus court to make an independent review of the state court record and the applicable law. *Bell v. Jarvis*, 236 F.3d 149, 158 (4th Cir. 2000); *Harris v. Stovall*, 212 F.3d 940, 943 (6th Cir. 2000); *Greene v. Lambert*, 288 F.3d 1081, 1089 (9th Cir. 2002). The First, Fifth, Seventh and Eleventh Circuits have adopted the view that the habeas corpus court should focus on the conclusions of the state court and that while the state court's reasoning would be helpful, it was not essential to the application of § 2254(d)(1). The habeas corpus court must be convinced, however that the state court had addressed the federal issues. *DiBenedetto v. Hall*, 272 F.3d 1, 6 (1st Cir. 2001); *Neil v. Puckett*, 239 F.3d 683, 696 (5th Cir. 2001); *Hough v. Anderson*, 272 F.3d 878, 897 (7th Cir. 2001); *Wright v. Department of Corrections*, 278 F.3d 1245, 1254 (11th Cir. 2002). The Eighth Circuit has applied § 2254(d)(1) to cases where the state court made a summary disposition. *James v. Bowersox*, 187 F.3d 866, 869 (8th Cir. 1999).

This diversity of analytical approach suggests the desirability of guidance from this Court. It is particularly troubling that a habeas corpus court would be placed in the position of "guessing" the reasoning of a state court or even whether a federal issue had been addressed at all. Such a method would cause the applicability of § 2254(d)(1) and any subsequent analysis under that section if it were deemed applicable, to be subject to the caprice of an individual judge. It may be that in some cases the federal issue is readily apparent from the state court record and it would have been impossible for the state court to decide the case without having addressed it. In the instant case, however, with multiple grounds

having been presented to the state court, a state court dismissal, without more, makes it impossible to know if all of the federal issues had been addressed or adjudicated within the meaning of § 2254(d)(1).

2. CERTIORARI SHOULD BE GRANTED TO SETTLE WHETHER AND TO WHAT EXTENT IN IDENTIFYING "CLEARLY ESTABLISHED FEDERAL LAW" FOR THE PURPOSE OF 28 U.S.C. § 2254(d)(1) A HABEAS CORPUS COURT MAY LOOK TO GENERALIZED STATEMENTS IN THIS COURT'S CASE LAW AS WELL AS MORE SPECIFIC RULES.

If § 2254(d)(1) applies, a habeas corpus court must determine whether a given state court decision is "contrary to" or an "unreasonable application of" "clearly established federal law" as determined by this Court.

The Court of Appeals held that "the Supreme Court has never endorsed the proposition that confinement for civil contempt must cease when there is no 'substantial likelihood of compliance.'" (Appendix A, p.25). Consequently, the Court of Appeals reversed the District Court judgment which was based upon a broader view of this Court's case law. The District Court concluded that such a proposition was indeed consistent with this Court's jurisprudence. It therefore determined that the continuation of Mr. Chadwick's civil contempt confinement after seven years (or five years, as it was at the date of the state court decision) could no longer be coercive and thus was a violation of the due process clause, and it was unreasonable for the state court to conclude otherwise. (Appendix B).

The District Court relied upon this Court's early leading case dealing with contempt imprisonment, *Gompers v. Bucks Stove & Range Co.*, 221 U.S. 418, 442-53 (1911) where a 12-month sentence imposed in a civil contempt proceeding for violation of a labor injunction was held to have no coercive force and therefore, was punitive and could not be imposed without affording criminal due process rights. More recently, in *United Mine Workers v. Bagwell*, 512 U.S. 821 (1994) the Court reaffirmed that punitive sanctions are impermissible in civil contempt proceedings. From these cases, the District Court concluded that civil confinement fails to comport with the due process clause when that confinement ceases to be coercive.

The District Court then looked to *Maggio v. Zeitz*, 333 U.S. 56 (1948) for the proposition that civil contempt ceases to be coercive and becomes punitive after a reasonable period. In *Maggio*, where a bankrupt was jailed for contempt because of noncompliance with a turnover order, the opinion by Justice Jackson for eight Justices recognized that a time limitation must be applicable to civil confinement for contempt:

> "It is everywhere admitted that even if he is committed he will not be held in jail indefinitely if he does not comply. His denial of possession is given credit after demonstration that a period in prison does not produce the goods." *Id.* at 76.

Justice Frankfurter, while dissenting from the *res judicata* holding, nevertheless agreed that "the District Court has power to discharge a contemnor when confinement has become futile, or release may be had through the use of habeas corpus . . . ." *Id.* at 90. In discussing in *Maggio* the procedural and substantive issues which arose in cases like this, Justice Jackson relied principally upon the unanimous opinion written by Chief Justice Taft in *Oriel*

v. Russell, 278 U.S. 358 (1929) where the Court expressly analogized the bankruptcy turnover cases to "contempt cases where, under a decree for alimony, it is necessary to resort to coercive measures to secure compliance, and the issue of fact arises as to the ability of the contemnor to pay what is owing." *Id.* at 364-65. *Maggio*, 333 U.S. at 72, repeated with express approval the following passage from the Court's opinion in *Oriel*:

> "In the pending case, or in any other, the court may believe the . . . assertion that he is not now in possession or control of the money . . . , and in that event the civil inquiry is at an end; but it is also true that the assertion may not be believed, and the bankrupt may therefore be . . . restrained of his liberty. . . . I have known a brief confinement to produce the money promptly, thus justifying the court's incredulity, and I have also known it to fail. Where it has failed, and *where a reasonable interval of time has supplied the previous defect in the evidence,* and has made sufficiently certain what was doubtful before, *namely the bankrupt's inability to obey* the order, he has always been released, and I need hardly say that *he would always have the right to be released* . . . . " (Emphasis added).

Oriel, 278 U.S. at 365, quoting *In Re Epstein*, 206 F. 568, 569-70 (E.D. Pa. 1913), *aff'd, sub nom. Epstein v. Steinfeld*, 210 F. 236 (CCA 3d 1914).

This principle that a civil contemnor must be released after a reasonable period of confinement does not produce compliance has long been recognized by the lower federal courts as a fundamental due process principle with solid roots in decisions of this Court: *United States v. Lippitt*, 180 F.3d 873, 876-79 (7th Cir. 1999); *Soobzokov v. CBS, Inc.*, 642 F.2d 28, 31 (2nd Cir. 1981); *Sigety v. Abrams*, 632

F.2d 969, 975, n.6 (2nd Cir. 1980); *In Re Grand Jury Investigation*, 600 F.2d 420, 424-25 (3rd Cir. 1979); *Lambert v. Montana*, 545 F.2d 87, 89-91 (9th Cir. 1976); *In Re Cantazaro*, 663 F. Supp. 1 (D.D.C. 1985).

The Court of Appeals recognized that *Maggio* requires some reasonable limitation upon civil confinement, but concluded that the reasonable limitation would not apply in the instant case where it is presumed that the contemnor has the ability to comply[3] (Appendix A, p.23). That distinction, however, is a misstatement of *Maggio*. The prohibition against unlimited civil confinement for contempt discussed in that decision is not dependent on an ability to comply, but exists notwithstanding such ability. Prior to imposing imprisonment for civil contempt *Maggio* requires that the fact finding judge address a twofold question: "Whether or not there is actually a present ability to comply and whether failure to do so constitutes a deliberate defiance which a jail term will break." *Id.* 333 U.S. at 76. After some period of confinement due process requires that those questions be reconsidered. Contempt may not be adjudged in the first place unless the court is convinced that the contemnor has the ability to comply with the order as to which contempt is sought. *Maggio, Id.* After a reasonable period of fruitless coercive confinement the law ceases trying in the civil context to distinguish inability to comply from adamant refusal and presumes an inability to comply. This doctrine thus recognizes that after the passage of time there is a greater risk that the court has mistaken true inability for mere willfulness and

[3] Mr. Chadwick strongly contests the correctness of and record support for that presumption, which arises from the state court fact finding he challenged in his Petition. See Reason 4 below.

thus the greater risk of wrongful and/or excessive imprisonment.

The Court of Appeals concluded that there was "no federal constitutional bar to Mr. Chadwick's indefinite confinement" (Appendix A, p.26) by the state court because it found no decision of this Court which specifically established a temporal limitation on civil contempt confinement. By narrowing its search for "clearly established federal law as determined by the Supreme Court" to rules which covered the specific case at hand, the Court of Appeals effectively held that the due process clause places no limitation on the length of time a person may be confined for civil contempt. In view of the principles enunciated in *Oriel*, *Gompers*, *Maggio* and *Bagwell*, such a result is unsupportable. The Court of Appeals' search for specificity and its rejection of this Court's boarder jurisprudence in an effort to satisfy § 2254(d)(1) led it into the error that this Court warned against in *Williams*: that a "state court's incorrect legal determination has [never] been allowed to stand because it was reasonable." 529 U.S. at 411.

Several Circuits have begun to struggle with the question of how to identify the "clearly established federal law" for the purpose of § 2254(d)(1). The First Circuit has recognized that "frequently Supreme Court holdings are general in that they erect a framework specifically intended for application to variant factual situations." *O'Brien v. DuBois*, 145 F.3d 16, 25 (1st Cir. 1998). Similarly, the Ninth Circuit concluded that the Supreme Court need not have addressed the identical factual circumstances. *VanTran v. Lindsey*, 212 F.3d 1143, 1154 (9th Cir. 2000). Indeed to insist that it should, would deprive the "unreasonable application" clause of significance, a result

which *Williams* proscribed. 529 U.S. at 404. The Second Circuit was required in a case concerning the admissibility of identification evidence to consider the application of both general due process precedents and a "bright line" Rule. It concluded that both constituted clearly established federal law for the purpose of § 2254(d)(1). *Kennaugh v. Miller*, 289 F.3d 36, 42-43 (2nd Cir. 2002). The Sixth Circuit, faced with a case concerning the denial of a jury instruction on self defense, was unable to identify a Supreme Court case which enunciated the circumstances under which such an instruction should be given. It concluded, nevertheless, that under this Court's general due process case law the instruction at issue was required, declaring that clearly established federal law "also clearly includes legal principles and standards enunciated in the [Supreme] Court's decisions." *Taylor v. Withrow*, 268 F.3d 846, 850-51 (6th Cir. 2002). Judge Boggs, however, disagreed and in his concurring opinion expressed the view that the Supreme Court must have expressly stated a rule in order for a habeas corpus court to apply it under § 2254(d)(1). *Id.* at 854.

The Court of Appeals in the instant case appears to have adopted the view of Judge Boggs in *Taylor*. Justice O'Connor, in her concurring opinion in *Williams* reminded that "We have always held that federal courts, even on habeas, have an independent obligation to say what the law is." 529 U.S. at 411. Although § 2254(d)(1) limits the source of law to this Court's jurisprudence, a too narrow focus in identifying that law will cause habeas corpus courts to make an erroneous statement of the law and thereby, as in the instant case, reach the incorrect result.

3. CERTIORARI SHOULD BE GRANTED TO SETTLE WHETHER AND UNDER WHAT CIRCUMSTANCES A HABEAS CORPUS COURT IS REQUIRED UNDER 28 U.S.C. § 2254(d)(1) TO REJECT A STATE COURT'S UNREASONABLE FAILURE TO EXTEND A SETTLED CONSTITUTIONAL PRINCIPLE TO A NEW SETTING WHERE IT OUGHT TO APPLY.

Mr. Chadwick urged the courts below to find that the state court unreasonably failed to extend the holding of this Court in *United Mine Workers v. Bagwell*, 512 U.S. 821 (1994) to his case. In *Bagwell*, where the state court imposed what it characterized as a civil contempt fine of $52 million for violation of a labor injunction, this Court held that the contemnor was entitled to a jury trial and the other rights of a criminal accused because of the seriousness of the sanction which caused that penalty to be punitive in nature. The Court reasoned that the possibility that a serious sanction could be imposed and the need to decide a material fact issue required an impartial fact finder – a jury as opposed to the offended trial judge – and criminal law protections. The Court was concerned that "civil contempt proceedings leave the offended judge solely responsible for identifying, prosecuting, adjudicating and sanctioning the contemptuous conduct." *Id.* at 881, and as Justice Scalia pointed out in his concurring opinion, "That one and the same person should be able to make the rule, to adjudicate its violation and to assess its penalty is out of accord with our usual notions of separation of powers." *Id.* at 840. Mr. Chadwick argued that the *Bagwell* holding should have been extended to the serious imprisonment sanction involved in the instant case and that he should have been afforded a jury trial and attendant criminal law protections on the critical issue of his ability to comply with the state court order.

Although *Bagwell* itself involved a serious fine, the opinion strongly suggests that the holding would apply equally where the sanction imposed is a serious imprisonment. In fact, as part of the discussion as to what constitutes a serious sanction, the opinion noted, *Id.* 512 U.S. at 837, n.5, the decision in *Muniz v. Hoffman*, 422 U.S. 454 (1975) for the proposition that an offense is "petty" if it involves imprisonment of not more than six months or a fine of $5,000 or less. The rationale for the heightened due process requirements in *Bagwell* also would apply with equal force regardless of whether the contempt is labeled civil or criminal. The "elusive distinction" (*Id.* 512 U.S. at 830) between criminal and civil contempt which *Bagwell* tried to erase where a serious sanction was involved frequently continues to be the basis on which lower courts determine what process is due.[4] As one court stated, "It is not surprising that District Courts around the country, reluctant to surrender part of their power to coerce obedience to their decrees, have resisted the logic of *Bagwell*." *Evans v. Williams*, 206 F.3d 1292, 1297 (D.C. Cir. 2000). Thus, an additional reason to grant certiorari in this case is to settle that *Bagwell* did not intend to distinguish between civil and criminal contempt where a serious sanction was at issue.

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[4] See *Harris v. City of Philadelphia*, 47 F.3d 1311, 1329 (3rd Cir. 1995) (criminal rights would apply in civil contempt only if sanction was unconditional); *In Re E.I. DuPont, Benlate Litigation*, 99 F.3d 363, 368-69 (11th Cir. 1996) (criminal rights applied only because purpose of sanction was deemed non-coercive); *New York State N.O.W. v. Terry*, 159 F.3d 86, 93-94 (2nd Cir. 1998) (criminal rights attached only because no condition was stated); *American Airlines Inc. v. Allied Pilots Assn.*, 228 F.3d 574, 583 (5th Cir. 2000) (criminal rights would not apply in civil contempt).

The Court of Appeals "assumed the validity of the principle of unreasonable failure to extend" (Appendix A, p.15-16, n.8) but did not discuss Mr. Chadwick's argument that the *Bagwell* holding should have been extended to his case. Instead, its opinion relied upon *Bagwell* for a proposition the *Bagwell* opinion does *not* support – that this Court in *Bagwell* endorsed an unlimited right to confine a contemnor for civil contempt. (Appendix A, p.17). In support of this argument, the Court of Appeals cites a sentence in the *Bagwell* opinion, 512 U.S. at 528, which states: "The paradigmatic coercive, civil contempt sanction, as set forth in *Gompers*, involves confining a contemnor indefinitely until he complies with an affirmative command. . . . " This sentence appears in the introduction to the opinion where the Court was simply describing the historic differences between civil and criminal contempt. Nothing in *Bagwell* suggests that use of the term "indefinitely" means "permanently" and without other recourse. Nor is there any suggestion that *Bagwell* intended to overrule the principle which limited confinement for civil contempt that already was well established when it was reaffirmed in *Maggio*. The extent of confinement which lawfully could be imposed as a sanction for contempt was not even implicated in *Bagwell*. The issues that the Court considered in *Bagwell* and which were reflected in its holding concerned the process that was due to contemnors in jeopardy of serious sanctions – process that the Court of Appeals declined to extend to Mr. Chadwick.

Bagwell is part of a large body of due process cases decided by this Court in the last thirty years on which Mr. Chadwick relied for the proposition that he had an entitlement to due process protections not afforded. A number of these cases concerned the protections which should apply to the civil confinement of the mentally ill, a circumstance closely analogous to civil contempt. In *Jackson v.*

Indiana, 406 U.S. 715, 738 (1972) the Court held that due process requires a reasonable relation between the nature and duration of the commitment and the purpose of the commitment. *McNeil v. Director, Patuxent Institution*, 407 U.S. 245, 250-51 (1972) found that an indefinite confinement following the expiration of a criminal sentence on mental health grounds would be a due process violation. In *Foucha v. Louisiana*, 504 U.S. 71, 80 (1972) the Court required proof of dangerousness before a mentally ill person could be civilly confined. Subsequently, *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997) noted limitations which must be imposed on civil confinement under a state sexual predator statute.

In another realm related to civil confinement the Court recently construed a statute governing the deportation of aliens to limit a post-removal order of civil detention to a period reasonably necessary to bring about the alien's removal, generally no more than six months. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). In reaching that decision the Court asserted that "government detention violates that [due process] Clause unless the detention is ordered in . . . certain special and narrow nonpunitive circumstances . . . where a special justification . . . outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Id.*, at 690 (internal citations and quotations omitted). Although urged to do so, the Court of Appeals did not extend this solid line of precedent to the circumstances of this case.

Justice O'Connor's opinion for the Court in *Williams* requires a habeas corpus court to conduct an analysis under both the "contrary to" and "unreasonable application" clauses of § 2254(d)(1). *Id.* 529 U.S. at 407. Although that opinion defined the unreasonable application clause to include an unreasonable failure to extend a legal

principle to a new context where it ought to apply, the Court did not elaborate how such extension principle should be applied. *Id.* at 408-9. In *Ramdass v. Angelone*, 530 U.S. 156, 166 (2000) the Court in a plurality opinion restated the principle but again did not provide guidance as to its implementation. There is, of course, a close connection between the unreasonable failure to extend and the identification of clearly established federal law for the purpose of § 2254(d)(1). If the search for federal law is limited to specific Supreme Court precedent, as the Court of Appeals in the instant case maintained, it is difficult to envision that the extension principle could be applied at all. Thus, it is not surprising that the Court of Appeals did not apply the principle in this case. On the other hand, where a habeas corpus court sought federal law in this Court's general jurisprudence, it recognized that that law could be derived through application of the extension principle. *Kennaugh*, 289 F.3d at 45; *Taylor*, 288 F.3d at 851. The instant case affords an opportunity for the Court to address this issue.

4. CERTIORARI SHOULD BE GRANTED TO SETTLE WHETHER A HABEAS CORPUS REVIEWING COURT IS OBLIGED TO PERFORM A DE NOVO REVIEW OF THE RECORD WHEN IT RESTS ITS DECISION ON STATE COURT FACTFINDING CHALLENGED UNDER 28 U.S.C. § 2254(d)(2) AND THE DISTRICT COURT DID NOT HOLD AN EVIDENTIARY HEARING.

The decision of the Court of Appeals is based upon the assumption, derived solely from the state fact finding, that Mr. Chadwick has the ability to comply with the order as to which he was held in contempt. Mr. Chadwick's petition

challenged that fact finding under 28 U.S.C. § 2254(d)(2) as unreasonable in light of the record evidence.

The District Court did not hold an evidentiary hearing, but concluded that Mr. Chadwick had the ability to comply based solely on the state court fact finding. The District Court did not examine the state court fact finding in any depth, however, granting relief on other grounds. The appeal, filed by Mrs. Chadwick, did not raise this issue, nor was it briefed or argued. Since Mr. Chadwick was not aggrieved by the District Court order he could not raise the issue on appeal. Mr. Chadwick thus faces a decision by the Court of Appeals which is premised upon the very fact finding he challenged in his Petition, but which was not litigated.

The Court of Appeals reviewed the District Court's legal conclusions de novo and noted that "If a District Court has a proper occasion to make findings of fact, they are reviewed for clear error." (Appendix A, p.12, n.6). Although the Court of Appeals noted (*Id.* p.3) that the District Court accepted the state courts' findings as to Mr. Chadwick's ability to comply, these findings were not further reviewed. The Court of Appeals noted, in fact, that "no § 2254(d)(2) inquiry is necessary here." *Id.*, p.15, n.7.

Whether the state court record properly supported that finding, the issue presented in the petition for habeas corpus, was a mixed question of fact and law. Had the District Court based its decision on this issue, it doubtless would have been reviewed de novo. As a result of the Court of Appeals decision, however, this question which the Court of Appeals found significant but the District Court did not, received no review at all. The effect was to eliminate any right Mr. Chadwick had to habeas corpus relief under § 2254(d)(2).

Such a result does not give proper effect to the statutory provision. The Sixth Circuit has attempted to resolve this problem by conducting an independent examination of the record to make its own determination as to contested facts in cases where the District Court did not hold an evidentiary hearing. *Taylor*, 288 F.3d at 850. It is submitted that such a procedure, or remand to the District Court for an evidentiary hearing, should be followed in cases like the instant one to avoid foreclosing § 2254(d)(2) claims.

5. CERTIORARI SHOULD BE GRANTED TO SETTLE WHETHER A PRIVATE PARTY HAS ARTICLE III STANDING TO APPEAL IN A HABEAS CORPUS PROCEEDING UNDER 28 U.S.C. § 2254 WHERE NO STATE RESPONDENT HAS APPEALED.

The Court of Appeals found that Mr. Chadwick's former wife had standing to appeal the grant of habeas corpus, notwithstanding that none of the state respondents filed a notice of appeal. This question has not previously been addressed by this Court and there are sound legal and policy reasons not to permit this result.

In *Diamond v. Charles*, 476 U.S. 54 (1986) this Court dismissed an appeal by a physician who sought to challenge the constitutionality of a state abortion control law after the state had abandoned its interest in the case. In the absence of the state as a party, the Court held that there was no case for him to join. He would have to establish Article III standing on his own, which he was unable to do because he had no direct stake, merely an interest in the abortion process.

The Court of Appeals concluded in the instant case that Mrs. Chadwick could establish standing in her own

right because she met the requisite tests: an injury in fact which is concrete, not conjectural or hypothetical; a fairly traceable connection between the alleged injury and the other party; and that it was likely, as opposed to speculative, that the injury will be addressed by a decision favorable to the appellant. (Appendix A, p.7-8). See *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-63 (1992).

The alleged injury, however, must be legally cognizable. *Diamond*, 476 U.S. at 64. As that decision held, "a private citizen lacks a judicially cognizable interest in the prosecution or non-prosecution of another." *Id.*, citing *Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973). By the same reasoning, a private citizen lacks a judicially cognizable interest in the imprisonment of another. Just as the Court pointed out in *Diamond*, 476 U.S. at 65, "the state alone is entitled to create a legal code," only the state is empowered to impose the sanction of imprisonment. Thus, while Mrs. Chadwick may have a strong interest in keeping her ex-husband in jail, that is not an interest that the law permits a private individual to pursue. A contrary result would allow crime victims to oppose habeas corpus relief sought by their alleged perpetrators. This is not a result that our system of justice ever has recognized. Indeed, this Court has refused to permit an interested private party to prosecute a criminal contempt, requiring the appointment of a disinterested prosecutor. *Young v. U.S. ex rel. Vuitton et fils, S.A.*, 481 U.S. 787 (1987). In a recent decision, this Court did permit a private environmental group to seek injunctive relief and civil penalties against an alleged violator of the Clean Water Act, even though the penalties would be paid to the government. *Friends of Earth, Inc. v. Laidlaw Environmental Services, Inc.*, 528 U.S. 167, 184-88 (2000). There, however, the Act specifically authorized private enforcement. There is no suggestion that the Court would seek to extend that rule

to create standing to enforce a criminal penalty like imprisonment, and the opinion distinguished *Linda R.S.* partly on that basis. 528 U.S. at 188, n.4.

Even in the event it should be determined that Mrs. Chadwick's interest is legally cognizable, it still fails to meet the test of a real, non-speculative injury. The Court of Appeals reasoned that the potential reduction in Mrs. Chadwick's distribution of marital property, if Mr. Chadwick were not under the pressure of imprisonment to pay the money at issue, was sufficient to conclude that Mrs. Chadwick had demonstrated a palpable injury which was addressable by the Court (Appendix A, p.8). However, the money at issue is not payable to Mrs. Chadwick; she has not received any award of marital property or money, so that any injury that she might claim would be hypothetical and contingent, not real and actual. Mrs. Chadwick has the burden of proving her injury in order to establish standing, *Defenders of Wildlife*, 504 U.S. 560-63, and failed to prove that she will sustain any loss if Mr. Chadwick is released from confinement that she would not suffer in any event. Moreover, if Mrs. Chadwick's injury is not hypothetical then her injury is simply as an unpaid creditor, removing all doubt that Mr. Chadwick's imprisonment is for the purpose of coercing the payment of money, notwithstanding that imprisonment for debt is everywhere abolished.

Furthermore, Mrs. Chadwick's alleged injury, as framed by the Court of Appeals, lacks a nexus with the issue – lawfulness of confinement – in a habeas corpus case. The injury must be fairly traceable to the challenged conduct for standing to be shown. *Allen v. Wright*, 468 U.S. 737, 754 (1984). If Mrs. Chadwick has suffered an injury, it is because she has not proven that Mr. Chadwick has possession of the cash she seeks, despite having conducted

extensive discovery. No injury is caused simply by the release of Mr. Chadwick from confinement. In addition, if Mrs. Chadwick has sustained an injury as alleged, a habeas corpus court cannot address it. Such a court is concerned only with the lawfulness or not of confinement. The Court cannot give her the money or property she seeks.

Whether a private party has standing to appeal the grant of habeas corpus relief may be a matter of first impression. The Court of Appeals cited only one case where the issue was litigated, *Martin-Trigona v. Shiff*, 702 F.2d 380 (2nd Cir. 1983), where a bankrupt debtor sought habeas corpus relief to question the power of a bankruptcy court to order him imprisoned for contempt for refusal to submit to examination by the trustees in bankruptcy. This case was unique in that because the bankrupt named the judge as the respondent the court ordered the trustees to respond. The trustees, however, were not ordinary private parties but were officers appointed by and responsible to the court. It does not appear that the court considered the issue of a legally cognizable interest in the imprisonment of the bankrupt. The contempt at issue, however, related directly to the duties the trustees were appointed to perform and thus it was relatively easy to conclude that the trustees had a direct and real interest.

These unique considerations aside, the notion that a private party may control habeas corpus litigation raises troubling issues. The opportunity, as has been demonstrated in the instant case, to use the power of the state to deprive another of his freedom for personal retribution and to achieve leverage in a private lawsuit, is one that the law should not abet or encourage.

CONCLUSION

For the foregoing reasons the Petitioner respectfully prays that his Petition for a Writ of Certiorari be granted.

Respectfully submitted,

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APPENDIX

A. Opinion of the United States Court of Appeals for the Third Circuit, December 4, 2002 ..... App. 1

B. Opinion of the United States District Court for the Eastern District of Pennsylvania, January 3, 2002 ..... App. 27

C. Order of Supreme Court of Pennsylvania, February 8, 2000 ..... App. 47

D. Order of United States Court of Appeals for the Third Circuit Sur Petition for Rehearing, December 4, 2002 ..... App. 48

E. Judgment of United States Court of Appeals for the Third Circuit, August 20, 2002 ..... App. 50

F. Order of Court of Common Pleas of Delaware County, Pennsylvania, July 22, 1994 ..... App. 52

G. Order of Court of Common Pleas of Delaware County, Pennsylvania, November 2, 1994 ..... App. 54

H. Extract from Petition for Writ of Habeas Corpus showing grounds for relief, filed in United States District Court for the Eastern District of Pennsylvania, March 2, 2000 ..... App. 57

APPENDIX A

PRECEDENTIAL

Filed December 4, 2002

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 02-1173

H. BEATTY CHADWICK

v.

JAMES JANECKA, WARDEN, DELAWARE COUNTY PRISON; THE DISTRICT ATTORNEY OF COUNTY OF DELAWARE; THE ATTORNEY GENERAL OF THE STATE OF PENNSYLVANIA

v.

BARBARA JEAN CROWTHER CHADWICK,
(Intervenor in District Court)

BARBARA JEAN CROWTHER CHADWICK,
Appellant

ON APPEAL FROM THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

District Court Judge: Honorable Norma L. Shapiro
(D.C. No. 00-cv-01130)

Argued: May 24, 2002

Before: ALITO, MCKEE, and WALLACE,* *Circuit Judges.*

(Opinion Filed: December 4, 2002)

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*The Honorable J. Clifford Wallace, Senior Judge of the United States Court of Appeals for the Ninth Circuit, sitting by designation.

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OPINION OF THE COURT

ALITO, *Circuit Judge*:

This appeal was taken from an order granting a petition for a writ of habeas corpus filed by Mr. H. Beatty Chadwick under 28 U.S.C. § 2254. The petitioner has applied eight times to the courts of Pennsylvania and six times to the federal district court for release from incarceration for civil

contempt for refusing to comply with an order in a matrimonial proceeding directing him to pay over $2.5 million into an escrow account. In the present case, the District Court concluded that the petitioner had exhausted state remedies even though he had not applied to the Pennsylvania Supreme Court for review of the adverse decision of the Superior Court. In the view of the District Court, it was sufficient that the petitioner subsequently submitted a habeas petition to the Pennsylvania Supreme Court in its original jurisdiction pursuant to 42 Pa. Cons. Stat. § 721. With respect to the merits of the present proceeding, the District Court accepted the state courts' repeated findings that the petitioner *is able* to comply with the order directing him to pay the funds into escrow, but the District Court nevertheless held that the length of petitioner's confinement — then almost seven years — meant that the contempt order had lost its coercive effect and that confinement for civil contempt was no longer constitutional. On appeal, the petitioner defends that decision of the District Court but does not contest the state courts' findings that he is able to comply with the underlying order but simply refuses to do so. We reverse.

I.

In November 1992, Mrs. Barbara Chadwick filed for divorce in the Delaware County (Pennsylvania) Court of Common Pleas. During an equitable distribution conference in February 1993, Mr. Chadwick informed the state court and Mrs. Chadwick that he had unilaterally transferred $2,502,000.00 of the marital estate to satisfy an alleged debt to Maison Blanche, Ltd., a Gibraltar partnership.

It was later discovered that (1) one of the principals of Maison Blanche had returned $869,106.00 from Gibraltar to an American bank account in Mr. Chadwick's name and that these funds had then been used to purchase three insurance annuity contracts; (2) $995,726.41 had been transferred to a Union Bank account in Switzerland in Mr. Chadwick's name; and (3) $550,000.00 in stock certificates that the petitioner claimed he had transferred to an unknown barrister in England to forward to Maison Blanche had never been received. The state court then

entered a freeze order on the marital assets on April 29, 1994.

In May 1994, Mr. Chadwick redeemed the annuity contracts and deposited the funds in a Panamanian bank. After a hearing on July 22, 1994, the court determined that Mr. Chadwick's transfer of the money was an attempt to defraud Mrs. Chadwick and the court. At that time, the court ordered petitioner to return the $2,502,000.00 to an account under the jurisdiction of the court, to pay $75,000.00 for Mrs. Chadwick's attorney's fees and costs, to surrender his passport, and to remain within the jurisdiction. Mr. Chadwick refused to comply, and Mrs. Chadwick thereafter filed a petition to have him held in civil contempt. Mr. Chadwick failed to appear at any of the three contempt hearings, but his attorney was present. The court found Mr. Chadwick in contempt of the July 22, 1994, order and issued a bench warrant for his arrest.

After learning of the bench warrant, Mr. Chadwick fled the jurisdiction but was arrested and detained on April 5, 1995. The state court determined that Mr. Chadwick had the present ability to comply with the terms of the July 22, 1994, order and set bail at $3,000,000. Mr. Chadwick could have been released from custody either by posting bail or by complying with the July 22, 1994, order. To date, he has done neither.

Since his confinement, Mr. Chadwick has applied eight times to the state courts[1] and six times to the federal court[2]

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1. The state petitions include: (1) an emergency petition for release, which was denied by the Court of Common Pleas and affirmed by the Superior Court; (2) six state habeas petitions, all of which were denied; and (3) a petition for release from imprisonment or, in the alternative, house arrest, which was denied. *See* Appellant's Br. at 8-12.

2. The federal petitions include: (1) an emergency motion for injunctive relief pursuant to 42 U.S.C. § 1983, which was denied because abstention was appropriate under the doctrine of *Younger v. Harris*, 401 U.S. 37 (1971); (2) an emergency motion pursuant to 42 U.S.C. § 1983, which was denied, or, in the alternative, habeas corpus under 28 U.S.C. § 2241, which was dismissed for failure to exhaust state remedies; (3) a third federal habeas petition, which was denied for failure to exhaust state remedies; (4) a petition for reconsideration of the dismissal of the

to gain release from incarceration. After the trial court denied his sixth state habeas petition, the Superior Court affirmed the decision on April 23, 1997, stating:

> Instantly, appellant cites to the fact that he has been incarcerated since April 5, 1995. He claims the length of his incarceration, his age, poor health, inability to pursue his career and repeated hearings where he has refused compliance suggests that there is no possibility that he will comply with the order. Appellant admits that no court in this jurisdiction has adopted this test and we will not do so here. While it seems reasonable that at some point a temporal benchmark should be adopted to determine when contempt incarceration becomes impermissibly punitive we think that it is for our high court to make such a determination.

Chadwick v. Janecka, No. 00-CV-1130, 2000 U.S. Dist. LEXIS 21732, at *14-15 (E.D.Pa. Dec. 11, 2000) (internal citation omitted). Despite the Superior Court's invitation that the petitioner ask the Pennsylvania Supreme Court to decide the point at which incarceration for contempt becomes punitive, the petitioner did not file an allocatur petition in the state supreme court.

Later, on July 18, 1997, petitioner filed another petition for *federal* habeas relief, which was dismissed for failure to exhaust state court remedies. The District Court wrote:

> Although Mr. Chadwick has forfeited his right to seek Supreme Court review of the Superior Court's April 23, 1997 denial of his sixth state habeas petition, *see* Pa.R.App.P. 1113(a) (petition for allowance of appeal must be filed within 30 days of order), he would not be barred from filing a seventh state habeas petition based on his present confinement of approximately thirty-seven months. Under Pennsylvania law, Mr.

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third federal habeas petition, which was also denied for failure to exhaust state remedies; (5) a fourth federal habeas petition, which was also denied for failure to exhaust state remedies; and (6) a fifth federal habeas petition, which is the basis of this appeal. *See* Appellant's Br. at 12-13.

> Chadwick can file a seventh state habeas petition in the Court of Common Pleas and exhaust his appellate remedies, *see* 42 Pa.Cons.Stat.Ann. § 931, *or petition directly in the Supreme Court, which has original jurisdiction over habeas corpus proceedings. See* 42 Pa.Cons.Stat.Ann. § 721(1). But unless the issues presented in the federal habeas petition have all been first presented to the Supreme Court, the district court may not exercise jurisdiction. *See Lambert*, 134 F.3d at 515 (requiring "complete exhaustion"); *Swanger*, 750 F.2d at 295 (raising claim before Supreme Court in petition for allowance of appeal satisfies exhaustion requirement).

Chadwick v. Andrews, No. 97-4680, 1998 WL 218026, at *5 (E.D.Pa. April 30, 1998) (emphasis added). Because Mr. Chadwick had not sought review in the Pennsylvania Supreme Court on the issue presented in his federal petition, that petition was dismissed.

In September 1999, Mr. Chadwick filed a *pro se* Application for Leave to File Original Process (his seventh state habeas action) with the Pennsylvania Supreme Court. Mrs. Chadwick sought permission to intervene, and opposed the application and the state habeas petition. In a *per curiam* order dated February 8, 2000, the Pennsylvania Supreme Court granted the request to file original process and the request to file an answer, but the court denied the petition for habeas corpus.

On March 2, 2000, Mr. Chadwick filed the instant petition for federal habeas relief. The District Court granted that petition on January 3, 2002, but stayed its order for 30 days to "allow appeal and application for further stay of this court's order to the appellate court." *Chadwick v. Janecka*, No. 00-1130, 2002 U.S. Dist. LEXIS 10, at *27 (E.D.Pa. Jan.3, 2002). Mrs. Chadwick took this timely appeal. By order dated January 31, 2002, we granted Mrs. Chadwick's motion for a stay pending appeal. The United States Supreme Court thereafter denied Mr. Chadwick's Application for Enlargement and to Vacate Stay.

II.

The first issue we must address is whether Mrs. Chadwick has standing to proceed on appeal. Mr. Chadwick

argues that because Mrs. Chadwick was an intervenor in the District Court, she lacks Article III standing. He further argues that, because the respondents — the warden, the Delaware County District Attorney, and the Attorney General of the Commonwealth — did not appeal, we do not have jurisdiction to entertain this appeal.

The United States Supreme Court has stated that "an intervenor's right to continue a suit in the absence of the party on whose side the intervention was permitted is contingent upon a showing by the intervenor that he fulfills the requirements of Art[icle] III." *Diamond v. Charles*, 476 U.S. 54, 68 (1986). Under Article III of the United States Constitution, the judicial power extends only to "Cases" and "Controversies." As noted in *Vermont Agency of Natural Resources v. United States ex rel. Stevens*, 529 U.S. 765, 771 (2000):

> a plaintiff must meet three requirements in order to establish Article III standing. *See, e.g., Friends of Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*, 528 U.S. 167, 180-181, 120 S. Ct. 693, 145 L. Ed. 2d 610 (2000). First, he must demonstrate "injury in fact" — a harm that is both "concrete" and "actual or imminent, not conjectural or hypothetical." *Whitmore v. Arkansas*, 495 U.S. 149, 155, 109 L. Ed. 2d 135, 110 S. Ct. 1717 (1990) (internal quotation marks and citation omitted). Second, he must establish causation — a "fairly . . . traceable" connection between the alleged injury in fact and the alleged conduct of the defendant. *Simon v. Eastern Ky. Welfare Rights Organization*, 426 U.S. 26, 41, 48 L. Ed. 2d 450, 96 S. Ct. 1917 (1976). And third, he must demonstrate redressability — a "substantial likelihood" that the requested relief will remedy the alleged injury in fact. *Id.*

See also, e.g., Valley Forge Christian College v. Americans United For Separation of Church & State, 454 U.S. 464, 472 (1982); *In re Grand Jury*, 111 F.3d 1066, 1071 (3d Cir. 1997).

We have little difficulty concluding that Mrs. Chadwick meets all of these requirements here. First, Mrs. Chadwick clearly has suffered and continues to suffer an injury in

fact that is both "concrete" and "actual," "not conjectural or hypothetical." Mr. Chadwick has placed a substantial sum of money beyond the reach of the state court before whom the matrimonial case is pending. If the decision of the District Court is affirmed, Mr. Chadwick will be released from jail and will be relieved of the pressure to return this money for equitable distribution. Second, Mrs. Chadwick's injury is unquestionably traceable to Mr. Chadwick's refusal to comply with the state court order under which he is being held. The District Court's order would erase the effect of the state court order requiring the return of the funds and would significantly reduce Mrs. Chadwick's share of the marital estate. Third, Mrs. Chadwick's injury may be redressed by a favorable decision here. A reversal of the District Court's order granting Mr. Chadwick's petition would require him to remain in prison until he returns the $2.5 million to the state court for later distribution.

In arguing that Mrs. Chadwick lacks standing, the petitioner relies principally on *Diamond v. Charles*, 476 U.S. 54 (1986), but that case is easily distinguishable. The *Diamond* case involved a constitutional attack on an Illinois statute restricting abortions. *Id.* at 56. Diamond, a pediatrician, successfully moved to intervene in the District Court, based on his conscientious objection to abortion and his status as a pediatrician and the father of a minor daughter. *Id.* at 66. When the District Court permanently enjoined provisions of the statute and the Court of Appeals affirmed, the State of Illinois did not appeal to the Supreme Court, but Diamond did. *Id.* at 62-63. The Court held that Diamond could not maintain the appeal as the sole appellant because he lacked Article III standing. *Id.* at 64-71. Noting that Illinois, by not appealing, had accepted the decision that its statute was unconstitutional, the Court observed that even if it upheld the statute, Diamond, a private citizen, could not compel the state to enforce it. *Id.* at 64-65. In addition, the Court explained, Diamond could not establish that he had or would suffer injury in fact. *Id.* at 65-71. Diamond argued that if the statute were upheld, there would be fewer abortions and greater demand for his services as a pediatrician, but the Court dismissed this argument as speculative. *Id.* at 66. The Court likewise rejected Diamond's contention that he had standing

because of his interest in the standards of medical practice relating to abortion. *Id.* at 66-67. The Court stated that Diamond's abstract interest in the issue of abortion could not substitute for the concrete injury demanded by Article III. *Id.* In response to Diamond's claim of standing as the father of a minor daughter, the Court noted that the validity of the parental notification provision of the statute was not at issue in the appeal and Diamond had not provided factual support to show that the provisions that were at issue threatened him with any concrete injury. *Id.* at 67. Finally, the Court held that Diamond could not assert any constitutional rights of unborn fetuses and that the award of fees against him in the District Court could not "fairly be traced to the Illinois Abortion Law." *Id.* at 70.

Other than the fact that Diamond and Mrs. Chadwick are both intervenors, the two cases have little in common. Mrs. Chadwick, as noted, has a direct financial interest: she wants Mr. Chadwick to produce a very substantial sum of money in which she claims a share. By contrast, Diamond's claim that upholding the Illinois law would result in more live births and thus increase his income as a pediatrician was highly speculative and an obvious makeweight. *Diamond* was a classic case of an attempt to litigate an abstract legal issue; the present case involves a concrete monetary interest.

Mr. Chadwick argues, however, that Mrs. Chadwick has no concrete injury at stake because "even if she were somehow to secure a reversal of the district court's order, the respondents would still be required to release Mr. Chadwick, because they did not appeal." Appellee's Br. at 21. We reject this highly technical argument and find *Martin-Trigona v. Shiff*, 702 F.2d 380 (2d Cir. 1983), instructive on the question whether someone other than the legal custodian of a prisoner may appeal an adverse decision in a habeas proceeding. In *Martin-Trigona*, a bankruptcy judge ordered a debtor imprisoned for civil contempt when he refused to submit to examination by the trustees. *Id.* at 381. The debtor filed a petition for a writ of habeas corpus, the District Court granted the motion, and the trustees appealed. *Id.* The Second Circuit held that the trustees were the real parties in interest because "[t]hey

ha[d] a legitimate interest in seeing to it that Martin-Trigona testifie[d] to the location of certain assets, books, and records that are necessary to the administration of the estates." *Id.* at 386. Because the trustees' interests were sufficiently affected by the District Court's order, the Second Circuit held that the trustees had standing to appeal even though they were not the custodian of the debtor. *Id.*; *Cf. United States ex rel. Thom v. Jenkins*, 760 F.2d 736 (7th Cir. 1985) (private party who prosecuted contempt proceedings against judgment debtor was respondent and appellee on appeal of debtor's habeas petition following jailing for contempt). *Martin-Trigona* is analogous to the case at bar because Mrs. Chadwick — like the trustees — is the party who has "a legitimate interest in seeing to it," 702 F.2d at 386, that Mr. Chadwick returns a substantial portion of the marital estate to the court. We find the decision in *Martin-Trigona* to be persuasive.

The only case cited by Mr. Chadwick in support of his position is far afield. In *Carter v. Rafferty*, 826 F.2d 1299, 1303-04 (3d Cir. 1987), the District Court granted habeas petitions filed by two prisoners who had been tried and convicted together in state court. The habeas respondents appealed, but their notice of appeal "specifically limited itself to the order releasing [one of the prisoners]." *Id.* at 1303. Noting that what was then Rule 3(c) of the Federal Rules of Appellate Procedure[3] required that a notice of appeal "designate the judgment, order, or part thereof appealed from," the Court held that it lacked jurisdiction to consider the portion of the District Court's judgment relating to the other prisoner because the appellants had failed to specify that they were appealing that part of the judgment. *Id.* at 1304. Thus, *Carter* does not stand for the proposition that only the person with the keys to the jail has standing to appeal an order granting a writ of habeas corpus. Rather, *Carter* holds that only the portions of an order specified in a notice of appeal may be challenged in the appeal. We accordingly hold that Mrs. Chadwick has Article III standing to pursue the present appeal. We have considered all of Mr. Chadwick's standing arguments, and we find them to be devoid of merit.

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3. *See* current Fed. R. App. Proc. 3(c)(1)(B).

III.

Mrs. Chadwick argues that Mr. Chadwick did not exhaust all available state court remedies before presenting his claims to the federal court in his habeas petition. *See* 28 U.S.C. § 2254(b)(1). Mrs. Chadwick makes two exhaustion arguments. First, she argues that Mr. Chadwick did not fairly present to the Pennsylvania Supreme Court the same claims that he raised in his federal habeas petition. *See Picard v. Connor*, 404 U.S. 270, 275-76 (1971). Specifically, Mrs. Chadwick urges reversal because the period of confinement listed in Mr. Chadwick's application for leave to file original process before the Pennsylvania Supreme Court — "over 50 months" (i.e., four years and two months) — and the period of confinement for which the District Court granted habeas — "nearly seven years" — are not the same. Second, Mrs. Chadwick argues that Mr. Chadwick's application for leave to file original process did not fairly present the claims to the Pennsylvania Supreme Court where, although it has original jurisdiction in habeas matters,[4] the Pennsylvania Supreme Court will ordinarily refer habeas petitions to the appropriate lower court, unless there exists "imperative necessity or apparent reason why expedition is desirable or required." *See Commonwealth ex rel. Paylor v. Claudy*, 366 Pa. 282, 287 (1951).

Although Mrs. Chadwick would have us decide the question of exhaustion, we decline to do so here because, under the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), Pub. L. 104-132, 110 Stat. 1214 (enacted April 24, 1996), we may deny a habeas petition on the merits even though state remedies may not have been exhausted. *See* 28 U.S.C. §2254(b)(2); *see also Pennsylvania ex rel. Craig v. Maroney*, 348 F.2d 22, 33 (3d Cir. 1965); *In re Ernst*, 294 F.2d 556, 561-62 (3d Cir. 1961).

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4. Pennsylvania statutes state that "[t]he Supreme Court shall have original but not exclusive jurisdiction of all cases of . . . Habeas corpus." 42 Pa. Cons. Stat. § 721.

IV.

A.

Turning to the merits,[5] we must first address the proper scope of review in this case. The parties dispute whether the standard of review set out in 28 U.S.C. § 2254(d) applies here.[6]

Relying on *Everett v. Beard*, 290 F.3d 500, 507-08 (3d Cir. 2002); *Appel v. Horn*, 250 F.3d 203, 209-12 (3d Cir. 2001); and *Hameen v. Delaware*, 212 F.3d 226, 248 (3d Cir. 2000), Mr. Chadwick argues that 28 U.S.C. § 2254(d) is inapplicable in this case because the "state supreme court, after accepting Mr. Chadwick's original habeas corpus petition for adjudication on its merits, denied relief without any statement of reasons at all." Appellee's Br. at 33. According to Mr. Chadwick, under these circumstances, 28 U.S.C. § 2254(d) "simply does not apply." Appellee's Br. at 33. We reject this argument, which is contrary to Supreme Court precedent and misinterprets our court's prior decisions.

Under 28 U.S.C. § 2254(d)(1)(emphasis added), if a state prisoner's habeas claim "was *adjudicated on the merits* in State court proceedings," our standard of review is narrow: we may not reverse "unless the adjudication of the claim . . . resulted in a decision that was contrary to, or involved

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5. After our decision reversing the decision of the District Court was filed, Mr. Chadwick filed a petition for rehearing that substantially elaborated on certain points raised in his original brief, and the panel received an answer to the petition pursuant to our Internal Operating Procedure 9.5.2. Both panel rehearing and rehearing en banc have been denied, but the panel believes that it is appropriate to respond to certain points addressed in the petition for rehearing. Rather than issuing a separate opinion sur denial of panel rehearing, this opinion has been amended in order to integrate that discussion into the related discussion in the original opinion.

6. We review de novo the District Court's legal conclusions, including its application of the standards of review imposed by AEDPA. *See Banks v. Horn*, 271 F.3d 527, 531 (3d Cir. 2001). If a District Court has a proper occasion to make findings of fact, they are reviewed for clear error. *See Love v. Morton*, 112 F.3d 131, 133 (3d Cir. 1997).

an unreasonable application of, clearly established Federal Law . . . ." In *Hameen*, we held that the petitioner had properly exhausted the claim that his Eighth Amendment rights had been violated because two of the aggravating circumstances found to support the death penalty were duplicative. 212 F.3d at 246-47. We concluded, however, that the Delaware Supreme Court "did not pass on [the petitioner's] Eighth Amendment constitutional duplicative aggravating circumstances argument, even though it had the opportunity to do so." *Id.* at 248. Accordingly, the *Hameen* panel held that this claim had not been "adjudicated on the merits in State court proceedings" and that the restrictive standard of review in 28 U.S.C. § 2254(d)(1) did not apply. 212 F.3d at 248.

Appel followed *Hameen*, stating that "when, although properly preserved by the defendant, the state court has not reached the merits of a claim thereafter presented to a federal habeas court, the deferential standards provided by AEDPA . . . do not apply." 250 F.3d at 210. The *Appel* panel held that the petitioner had properly presented in the state courts a claim of *the constructive denial of counsel* but that the state courts had misconstrued the claim as one of *the ineffective assistance of counsel*. *Id.* at 210-12. Observing that "[t]he two claims, of course, are different," *id.* at 210, the panel held that the constructive denial claim had not been decided by the state courts and that the restrictive standards of § 2254(d) did not apply. *Id.* at 211.

Finally, the *Everett* court, relying on *Hameen*, 290 F.3d at 508, held that the § 2254(d) standards did not apply because the state courts had not adjudicated the petitioner's properly exhausted claim that his Sixth Amendment right to the effective assistance of counsel had been violated but instead had decided only that his rights under state law had not been abridged. See *id.* at 516.

Hameen, *Appel*, and *Everett* stand for the proposition that, if an examination of the opinions of the state courts shows that they misunderstood the nature of a properly exhausted claim and thus failed to adjudicate that claim on the merits, the deferential standards of review in AEDPA do not apply. *Hameen*, *Appel*, and *Everett* did not deal with

summary dispositions — but *Weeks v. Angelone*, 528 U.S. 225 (2000), did.

In *Weeks*, the petitioner "presented 47 assignments of error in his direct appeal to the Virginia Supreme Court." 528 U.S. at 231. The state supreme court rejected number 44 without explanation. Reviewing this claim, the Fourth Circuit recognized that the AEDPA standards do not apply when a state court has not adjudicated a claim on the merits, *Weeks v. Angelone*, 176 F.3d 249, 258 (4th Cir. 1999), but the Fourth Circuit held that "[w]here, as here, the state supreme court has adjudicated a claim on the merits but has given no indication of how it reached its decision, a federal habeas court must still apply the AEDPA standards of review." *Id.* at 259. Applying those standards, the Fourth Circuit denied the application for a certificate and dismissed the habeas petition.

The United States Supreme Court reviewed the claim set out in assignment of error 44 and affirmed. *See* 528 U.S. at 231. After explaining why there had been no constitutional violation, the Court wrote:

> Because petitioner seeks a federal writ of habeas corpus from a state sentence, we must determine whether 28 U.S.C. § 2254(d) precludes such relief. The Court of Appeals below held that it did. 176 F.3d, at 261. We agree. Section 2254(d) prohibits federal habeas relief on any claim "adjudicated on the merits in State court proceedings," unless that adjudication resulted in a decision that was "contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." 28 U.S.C. §§ 2254(d) and (1) (1994 ed., Supp. III). For the reasons stated above, it follows a fortiori that the adjudication of the Supreme Court of Virginia affirming petitioner's conviction and sentence neither was "contrary to," nor did it involve an "unreasonable application of," any of our decisions.

528 U.S. at 237. Thus, the Supreme Court clearly held that the § 2254(d) standards apply when a state supreme court rejects a claim without giving any "indication of how it reached its decision." 176 F.3d at 259.

Needless to say, if *Hameen*, *Appel*, and *Everett* conflict with *Weeks*, the former must give way, but we see no such conflict. *Hameen*, *Appel*, and *Everett* govern when the opinion of a state court reveals that it did not adjudicate a claim; *Weeks* applies when a claim is rejected without explanation. In the present case, the Pennsylvania Supreme Court rejected Chadwick's claim on the merits without explanation. *Weeks* is therefore the governing precedent, and § 2254(d) must be applied.

B.

Under 28 U.S.C. § 2254(d), a federal court may grant habeas relief only if the state court's decision was "contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States," *id.* § 2254(d)(1), or was "based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding," *id.* § 2254(d)(2).[7] Moreover, a state court's factual findings are "presumed to be correct," and the habeas petitioner carries the "burden of rebutting the presumption of correctness by clear and convincing evidence." 28 U.S.C. § 2254(e)(1).

In *Williams v. Taylor*, 529 U.S. 362, 405-06 (2000), Justice O'Connor wrote in her controlling opinion that a state court ruling is "contrary to" clearly established Supreme Court precedent for the purposes of § 2254(d)(1) "if the state court applies a rule that contradicts the governing law set forth in [the Supreme Court's] cases," or "if the state court confronts a set of facts that are materially indistinguishable from a decision of [the Supreme Court] and nevertheless arrives at a result different from [its] precedent." A state court decision is an "unreasonable application"[8] of Supreme Court precedent if it "identifies the

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7. The District Court agreed with all of the factual findings of the state courts, stating that "[t]he record below clearly demonstrates that the state court findings were not erroneous. This court is convinced that Mr. Chadwick has the present ability to comply with the July 22, 1994 order." *Chadwick v. Janecka*, No. 00-1130, 2002 U.S. Dist. LEXIS 10, at *19 (E.D.Pa. Jan. 3, 2002). Therefore, no § 2254(d)(2) inquiry is necessary here.

8. It has been argued that a state court may unreasonably apply clearly established Supreme Court precedent by unreasonably refusing to

correct governing legal rule from [the Supreme] Court's cases, but unreasonably applies it to the facts of the particular state prisoner's case." *Williams v. Taylor*, 529 U.S. 362, 407 (2000) (O'Connor, J., concurring) (controlling opinion). When making the "unreasonable application" inquiry, the federal habeas court should ask "whether the state court's application of clearly established federal law was *objectively* unreasonable." *Id.* at 409 (emphasis added); *see also Matteo v. Superintendent, SCI Albion*, 171 F.3d 877, 891 (3d Cir. 1999) (en banc) (stating the test to be "whether the state court decision, evaluated *objectively* and on the merits, resulted in an outcome that cannot reasonably be justified [under existing Supreme Court precedent]") (emphasis added).

In urging this Court to affirm the District Court's decision, Mr. Chadwick argues that the state courts failed to recognize that his confinement has ceased to be coercive and that, as a consequence, he cannot be held in custody any longer unless he is convicted and sentenced for criminal contempt. We disagree and hold that the state courts' decision — denying habeas relief because Mr. Chadwick has the present ability to comply with the court order — was neither contrary to nor an unreasonable application of "clearly established Federal Law, as determined by the Supreme Court of the United States." 28 U.S.C. § 2254(d)(1).

1.

To determine whether a contempt order is civil or criminal, Supreme Court jurisprudence requires an examination of the "character and purpose" of the sanction imposed. *See International Union v. Bagwell*, 512 U.S. 821,

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extend a legal principle to a new context. *Ramdass v. Angelone*, 530 U.S. 156, 165 (2000); *Williams v. Taylor*, 529 U.S. 362, 408 (2000); *Marshall v. Hendricks*, 307 F.3d 36, 51 n.2 (3d Cir. 2002). For present purposes, we assume the validity of this subset of the concept of unreasonable application. In discussing the concept of unreasonable applications in this opinion, we intend our remarks to refer to all types of unreasonable application, including the unreasonable failure to extend.

827 (1994); *Gompers v. Buck's Stove & Range Co.*, 221 U.S. 418, 441 (1911). Civil confinement "is remedial, and for the benefit of the complainant," *Gompers*, 221 U.S. at 441, whereas criminal confinement "is punitive, to vindicate the authority of the court." *Id.* The *Bagwell* Court identified the "paradigmatic coercive, civil contempt sanction" as

> involv[ing] [the] confin[ement] [of] a contemnor *indefinitely* until he complies with an affirmative command such as an order "to pay alimony, or to surrender property ordered to be turned over to a receiver, or to make a conveyance." 221 U.S. at 442 . . . . In these circumstances, the contemnor is able to purge the contempt and obtain his release by committing an affirmative act, and thus " 'carries the keys of his prison in his own pocket.' " *Gompers*, 221 U.S. at 442.

512 U.S. at 828 (emphasis added) (citations omitted). Conversely, the *Bagwell* Court observed, "a fixed sentence of imprisonment is punitive and criminal if it is imposed retrospectively for a 'completed act of disobedience,' such that the contemnor cannot avoid or abbreviate the confinement through later compliance." *Id.* at 828-29 (citations omitted). Thus, *Bagwell* seems to permit a contemnor who has the ability to comply with the underlying court order to be confined until he or she complies, and if this reading is correct, *Bagwell* directly contradicts the decision of the District Court in the present case.

Mr. Chadwick, however, urges us not to take *Bagwell* at face value. He contends that the phrase "indefinitely until he complies" in *Bagwell* does not mean "permanently and without other recourse." Pet. for Rehearing at 4. Instead, he maintains that "[t]he word 'indefinitely' is apparently used in its most precise sense, to mean 'with no pre-determined ending date' . . . ." Pet. for Rehearing at 4 n.4. We have no quarrel with this definition, but this understanding of the term "indefinitely" does not explain away the critical statement in *Bagwell* that a civil contemnor may be confined "indefinitely *until he complies*." 512 U.S. at 828 (emphasis added).

The meaning of the statement in *Bagwell* that a contemnor may be held "indefinitely until he complies" is perfectly clear. The phrase "until he complies" sets the point in time when confinement must cease. The term "indefinitely" describes the length of confinement up to that point, namely, a period "having no exact limits," WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1147 (1971), because the end point (the time of compliance) cannot be foretold. Mr. Chadwick's contrary interpretation — that "indefinitely until he complies" means "indefinitely until he complies or it becomes apparent that he is never going to comply" — is insupportable. And even if that were a reasonable interpretation, the petition would still lack merit because in order to win it is not enough for Mr. Chadwick to show that his reading is reasonable; he must show that his reading is "clearly established" in Supreme Court precedent. 28 U.S.C. § 2254(d)(1).

In an effort to show that his position is "clearly established" in Supreme Court case law, Mr. Chadwick turns to *Maggio v. Zeitz*, 333 U.S. 56 (1948), which he interprets to mean that a civil contemnor who is able to comply with the underlying court order but simply will not do so must eventually be released. In making this argument, Mr. Chadwick relies almost entirely on two sentences in the *Maggio* opinion, but when that opinion is read in its entirety and with the context of the case in mind, it is apparent that the opinion does not support Mr. Chadwick's position. As we will explain, *Maggio* focuses on the question of *ability* to comply, not *willingness* to comply — and Mr. Chadwick's ability to comply has not been challenged in the present proceeding and is not at issue.

Maggio is a procedurally complicated case,[9] but for

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9. Maggio was the principal of a bankrupt camera shop. 333 U.S. at 58. The bankruptcy trustee asked the referee to order Maggio to turn over cameras and camera equipment that he had allegedly taken from the business. *Id.*; *In re Luna Camera Services*, 157 F.2d 951, 953 (2d Cir. 1946). To obtain such an order, the trustee was supposed to prove by clear and convincing evidence that Maggio had wrongfully taken the property and still possessed it. *In re Luna Camera Services*, 157 F.2d at 953. However, under Second Circuit precedent, once a wrongful taking

present purposes, it is enough to note that Maggio was the principal of a bankrupt company; that he was jailed for civil contempt for failing to comply with a "turnover order" directing him to return property that he had wrongfully taken from the debtor; and that the Second Circuit affirmed the order of contempt — even though there was no evidence in the record that Maggio still possessed the property and was thus able to return it and even though the Second Circuit panel expressed the view that Maggio clearly did not have the property and could not comply. Central to the Second Circuit's holding was its interpretation of certain statements in *Oriel v. Russell*, 278 U.S. 358 (1929), to mean that Maggio's continued possession of the property had to be viewed as established as a matter of law irrespective of whether he actually still had the property. *See* 333 U.S. at 71.

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was shown, continued possession at the time when the turnover order was sought was presumed unless the subject of the requested order proved the contrary. *Id.* In Maggio's case, the trustee offered no evidence of Maggio's continued possession, but the referee found that Maggio still possessed the property based solely on the presumption. The trustee thus ordered Maggio to turn over the property, and both the District Court and the Second Circuit affirmed. *See* 333 U.S. at 59. When Maggio failed to comply with this order, the referee found him in contempt, and the District Court affirmed and ordered him jailed until he complied. *Id.*

On appeal, the Second Circuit panel disagreed with Second Circuit precedent under which continued possession was presumed unless disproved. *See* 157 F.2d at 953. The panel expressed the view that the presumption was contrary to common sense in some instances and that Maggio no longer possessed the cameras and equipment. *Id.* at 953.

The panel, however, felt bound by circuit precedent to accept the presumption. The panel noted that the finding in the litigation regarding the turnover order that Maggio still possessed the property at the time of that order (in 1943) was res judicata. 157 F.2d at 954. Furthermore, the panel interpreted the Supreme Court's decision in *Oriel v. Russell*, 278 U.S. 358 (1929), to mean that it was also necessary to accept the fact that Maggio still possessed the property at the time of the order of contempt (in 1945). *See* 157 F.2d at 954. The panel thus affirmed the order of contempt, but it explicitly invited the Supreme Court to grant certiorari and wipe out the objectionable circuit precedent regarding the presumption of continued possession. *See id.* at 955. The Supreme Court obliged.

The Supreme Court reversed the Second Circuit and remanded the case to the District Court for the purpose of receiving evidence and making a finding on the question whether Maggio was able to comply with the turnover order. The entire focus of the opinion was on the issue of ability to comply. In part I of its opinion, the Court held that a turnover order should not be issued unless the person in question has the present ability to comply. 333 U.S. at 61-64.[10] In part II, the Court discussed the ways in which a bankruptcy trustee may prove continued possession and present ability to comply. *Id.* at 64-67. The Court agreed that present possession may sometimes be inferred from past possession, but the Court counseled that close attention should be paid to the particular circumstances of the case. *Id.*

After discussing other aspects of civil contempt law in part III of its opinion,[11] the Court explained in part IV that a bankrupt may not be jailed for refusal to perform "an impossibility." 333 U.S. at 69. The Court disagreed with the Second Circuit that *Oriel* compelled the courts to proceed on the assumption that Maggio continued to possess the property at the time of the order of contempt. The *Maggio* Court noted that *Oriel* had quoted the following statement from a lower court opinion:

> " 'Where [confinement for civil contempt] has failed [to produce compliance], and where a reasonable interval of time has supplied the previous defect in the evidence, and has made sufficiently certain what was doubtful before, namely, *the bankrupt's inability to obey the order*, he has always been released, and I need hardly say that he would always have the right to be released, as soon as the fact becomes clear that *he can not obey*.' "

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10. Court stated: "The nature and derivation of the remedy make clear that it is appropriate only when the evidence satisfactorily establishes the existence of the property or its proceeds, and possession thereof by the defendant at the time of the proceeding." 333 U.S. at 63-64.

11. The Court reaffirmed that a person held in civil contempt cannot attack the validity of the underlying order with which the person has not complied. 333 U.S. at 67-69.

333 U.S. at 72 (emphasis added) (quoting *Oriel*, 278 U.S. at 366 (quoting *In re Epstein*, 206 F. 568, 570 (E.D. Pa. 1913)). The Court continued that "the authorities relied upon" in *Oriel* made it clear that the "decision did not contemplate that a coercive contempt order should issue when it appears that there is at that time no willful disobedience but *only an incapacity to comply*." *Id.* at 72-73.[12]

Addressing Maggio's situation, the Court concluded that Maggio's possession of the property at the time of the turnover order created a prima facie case of his ability to comply at the time of the civil contempt, and the Court stated that he could "successfully meet" this prima facie case "only with a showing of present inability to comply." *Id.* at 75. The Court continued:

> Of course, if he offers no evidence as to his inability to comply with the turnover order, or stands mute, he does not meet the issue. Nor does he do so by evidence or by his own denials which the court finds incredible in context.

Id. at 76-77. Then, in the passage on which Mr. Chadwick relies, the Court added:

> [T]he bankrupt may be permitted to deny his present possession and to give any evidence of present conditions or intervening events which corroborate him. The credibility of his denial is to be weighed in the light of his present circumstances. *It is everywhere admitted that even if he is committed, he will not be held in jail forever if he does not comply. His denial of*

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12. In two lengthy footnotes, the *Maggio* Court surveyed the relevant lower court authorities. *Id.* at 73-74 nn. 6 & 7. In footnote six, the Court examined cases involving turnover orders in bankruptcy and stated that "[t]he cumulative effect of these authorities seems clearly to be that, while a bankrupt's denial of present possession, standing alone, may not be sufficient to establish his inability to produce the property or its proceeds, if the court is satisfied, from all the evidence properly before it, that *the bankrupt has not the present ability to comply*, the commitment order should not issue." 333 U.S. at 73 n. 6 (emphasis added). In footnote seven, the Court considered "cases involving contempt orders for failure to pay alimony" and found that these also turned on the same ability-to-comply principle. *Id.* at 74 n. 7.

> *possession is given credit after demonstration that a period in prison does not produce the goods.* The fact that he has been under the shadow of prison gates may be enough, coupled with his denial and the type of evidence mentioned above, to convince the court that his is not a wilful disobedience which will yield to coercion.
>
> The trial court is obliged to weigh not merely the two facts, that a turnover order has issued and that it has not been obeyed, but all the evidence properly before it in the contempt proceeding in determining whether or not there is actually a present ability to comply and whether failure so to do constitutes deliberate defiance which a jail term will break.

333 U.S. at 76 (emphasis added).

Mr. Chadwick's reading of *Maggio* is based principally on the two highlighted sentences in the block quote above. *See* Pet. for Rehearing at 5. Mr. Chadwick interprets these sentences to mean that "[t]he law eventually ceases trying in the civil context to distinguish inability to comply with adamant refusal." Pet. for Rehearing at 5. This reading, however, takes these two sentences out of context. When the statements are read in context, it is apparent that they refer to the inference of an inability to pay that arises after long confinement.

This interpretation is strongly supported by the *Maggio* Court's discussion of *Oriel*, to which we have previously referred. The first of the two sentences in *Maggio* on which Mr. Chadwick relies begins with the words "It is every where admitted . . . ." The sentence is thus restating settled law, not forging new ground, and the settled law is that recounted in *Oriel*, i.e., that a contempt order should not be issued unless there is a present inability to comply. *See* 333 U.S. at 72-74 and nn. 6, 7.

That the sentences in *Maggio* on which Mr. Chadwick relies refer to the inability to comply is also strongly supported by other parts of the opinion to which we have already referred. One example is the Court's statement that a person in Maggio's position could meet the prima facie case of continued possession "only" by showing a present

inability to comply. 333 U.S. at 75. Another example is supplied by the very next sentence after those on which the petition relies. That sentence states that long confinement ("the shadow of prison gates"), together with a denial of possession and corroborating evidence "*may* be enough" to convince a court that the contemnor is not being "willfully disobedient" but simply cannot comply. *Id.* at 76 (emphasis added).

When the two sentences from *Maggio* on which Mr. Chadwick relies are read in context, it is apparent that they refer to the inference that may be drawn under most circumstances when a contemnor, despite long confinement, fails to comply with an order such as a bankruptcy turnover order.[13] After all, the vast majority of people would not remain in jail "forever" rather than obey a court order requiring that the property of a bankrupt estate be turned over. Thus, in most cases, after a certain period, the inference that the contemnor is unable to comply becomes overwhelming. The present case, however, is not the ordinary case. On the contrary, it concerns an individual whom we must assume is fully capable of complying with the state court order but simply will not do so. Neither *Maggio* nor any other Supreme Court case clearly establishes that such a person must be released.

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13. We note that the Third Circuit opinion on which Mr. Chadwick relies most heavily — *In re Grand Jury Investigation (Appeal of Braun)*, 600 F.2d 420 (3d Cir. 1979)("*Braun*") — interpreted *Maggio* in this way. In *Braun*, a panel of our court accepted the very proposition of law advanced by Mr. Chadwick and accepted by the District Court — that a civil contemnor who is simply unwilling to comply with the court order must be released after the passage of a certain period of time — but the panel did not suggest that *Maggio* required or even supported this holding. Instead, the *Braun* court wrote:

> Since it is impossible to succeed in coercing that which is beyond a person's power to perform, continued incarceration for civil contempt "depends upon the ability of the contemnor to comply with the court's order. *Maggio v. Zeitz*, 333 U.S. 56, 76, 68 S.Ct. 401, 411, 92 L.Ed. 476 (1948)."

600 F.2d at 423 (quoting *Shillitani v. United States*, 384 U.S. 364, 371 (1966)). This understanding of *Maggio*, which contrasts sharply with Mr. Chadwick's, is correct.

2.

In this case, the District Court properly proceeded on the assumption that Mr. Chadwick has the present ability to comply with the July 1994 state court order. The state courts have repeatedly so found. Under 28 U.S.C. § 2254(e)(1), the District Court was bound by these state court factual determinations, absent rebuttal of the presumption of correctness by clear and convincing evidence. The District Court acknowledged that the record demonstrates that the state court findings were not erroneous, and the District Court stated that it was "convinced that [Mr.] Chadwick has the present ability to comply with the July 22, 1994 order." *Chadwick v. Janecka*, No. 00-1130, 2002 U.S. Dist. LEXIS 10, at *19 (E.D.Pa. Jan. 3, 2002).

Presuming these state court factual findings to be correct, the District Court nevertheless concluded that Mr. Chadwick's confinement had become punitive and that therefore the state court decision was an unreasonable application of federal law. Although the District Court alluded to the Supreme Court's decisions in *Bagwell* and *Gompers*, the District Court relied chiefly on this Court's decision in *In re Grand Jury Investigation (Appeal of Braun)*, 600 F.2d 420 (3d Cir. 1979)("*Braun*"), in concluding that the passage of time may alter the nature of a contemnor's confinement, transforming it from coercive to punitive and requiring observance of the procedural rights associated with criminal contempt. With this principle in mind, the District Court concluded that because Mr. Chadwick had defied the court's order for so long, there was "no substantial likelihood" that he would comply in the future and that therefore the order had lost its coercive effect.

In *Braun*, we upheld a contemnor's confinement for refusing to testify before a federal grand jury. *Id.* at 428. The contemnor argued that his confinement was not coercive but punitive, because "there was no substantial likelihood that he would testify before the grand jury." *Id.* at 422. Recognizing that some courts had applied the "no substantial likelihood of compliance" standard, we noted that the contemnor had been confined under a federal statute that limited confinement to 18 months for refusing

to testify before a grand jury. *Id.* at 423-24. We held that, absent unusual circumstances, 18 months was not an unreasonable length for confinement in this context, and declined to inquire whether, in fact, there was no substantial likelihood that the contemnor would comply with the order to testify. *Id.* at 427.

Under 28 U.S.C. § 2254(d), the District Court's holding — that Mr. Chadwick can no longer be held in custody for civil contempt because there is "no substantial likelihood" that he will comply with the order — is erroneous. The District Court incorrectly relied on dicta in one of our opinions, but AEDPA is clear that the appropriate law to apply is Supreme Court precedent. *See* 28 U.S.C. § 2254(d)(1) (referring to "clearly established Federal law, as determined by the Supreme Court of the United States"); *see also Williams*, 529 U.S. at 412 ("§ 2254(d)(1) restricts the source of clearly established law to [the Supreme] Court's jurisprudence").

It is true that "federal habeas courts are [not] precluded from considering the decisions of the inferior federal courts when evaluating whether the state court's application of the law was reasonable." *Matteo*, 171 F.3d at 890. But this Court has clearly stated that decisions by lower federal courts may be considered only "as helpful amplifications of Supreme Court precedent." *Id.* It is revealing to us that in *Braun* this Court characterized the "no substantial likelihood" test as an "*additional constraint* upon the civil contempt power" beyond that recognized in decisions by the United States Supreme Court. *Braun*, 600 F.2d at 423 (emphasis added). As we noted in *Matteo*, 171 F.3d at 890, however, "federal courts may not grant habeas corpus relief based on the state court's failure to adhere to the precedent of a lower federal court on an issue that the Supreme Court has not addressed."

The Supreme Court has never endorsed the proposition that confinement for civil contempt must cease when there is "no substantial likelihood of compliance." On the contrary, in words that might as well have been written to describe the case now before us, the *Bagwell* Court stated that "[t]he paradigmatic coercive, civil contempt sanction . . . involves confining a contemnor *indefinitely* until he

complies with an affirmative command such as an order 'to pay alimony, or to surrender property ordered to be turned over to a receiver . . . .'" *Bagwell*, 512 U.S. at 828 (emphasis added) (citation omitted). We have no need here to decide whether *In re Grand Jury Investigation* remains good law in light of *Bagwell*. It is enough for present purposes that the state court decisions cannot be disturbed under the restricted standard of review applicable in this habeas case.

V.

Because the state courts have repeatedly found that Mr. Chadwick has the present ability to comply with the July 1994 state court order, we cannot disturb the state courts' decision that there is no federal constitutional bar to Mr. Chadwick's indefinite confinement for civil contempt so long as he retains the ability to comply with the order requiring him to pay over the money at issue. Accordingly, the District Court erred in holding that the state courts' decisions were an unreasonable application of Supreme Court precedent. We, therefore, reverse the order of the District Court granting Mr. Chadwick's petition.

Our decision does not preclude Mr. Chadwick from filing a new federal habeas petition if he claims that he is *unable* for some reason to comply with the state court's order. And, needless to say, our decision imposes no restrictions on the state courts' ability to grant relief.[14]

A True Copy:
Teste:

Clerk of the UnitedStates Court of Appeals
for the Third Circuit

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14. We do not agree with Mr. Chadwick's argument that despite our reversal of the District Court's order, the respondents in the District Court must still release Mr. Chadwick because they did not appeal. Because of our judgment, the District Court's order granting the writ no longer has any operative effect and thus cannot command his release.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

H. BEATTY CHADWICK	:	CIVIL ACTION
v.	:	
JAMES JANECKA	:	NO. 00-1130

MEMORANDUM AND ORDER

Norma L. Shapiro, S.J. **January 3, 2002**

Petitioner H. Beatty Chadwick, Esq.[1] ("Chadwick"), filing a petition for writ of habeas corpus under 28 U.S.C. § 2254, challenges his continued incarceration for civil contempt. In his petition, Chadwick argues that his imprisonment is impermissibly punitive and he has been denied due process because: (1) he was and is unable to comply with a state court order of which he has been adjudged contemptuous; (2) he was denied a jury trial and other procedural rights; (3) he was imprisoned after a summary proceeding; (4) his imprisonment has become punitive; (5) he was imprisoned for failure to pay money; (6) his civil imprisonment is indefinite; (7) the imprisonment order is facially unlawful; (8) the state court ordering the incarceration lacked jurisdiction; and (9) he was denied a prompt appeal.

United States Magistrate Judge Arnold C. Rapoport issued a Report and Recommendation ("R & R") to deny and dismiss the petition without an evidentiary hearing and find no probable cause to issue a certificate of appealability.

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[1] Chadwick is an inactive member of the Pennsylvania Bar.

Petitioner filed objections and Barbara Jean Crowther Chadwick ("Ms. Chadwick"), petitioner's estranged wife and the Intervenor in this action, filed a motion to dismiss Chadwick's petition. For the reasons stated herein, the motion to dismiss will be denied and after *de novo* consideration of Chadwick's petition, the petition for writ of habeas corpus will be granted.

BACKGROUND

Ms. Chadwick filed a divorce action in the Delaware County Court of Common Pleas in November, 1992. During an equitable distribution conference in February, 1993, Chadwick informed the state court and Ms. Chadwick he had transferred $2,502,000 of the marital estate to satisfy an alleged debt to Maison Blanche, Ltd. ("Maison Blanche"), a Gibraltar partnership. *See Chadwick v. Chadwick,* No. 1555 Philadelphia 1995 at 2 (Pa. Super. Ct. Aug. 22, 1996) ("*Chadwick I*"). Ms. Chadwick had no knowledge of any debt owed by Chadwick to Maison Blanche.

After hiring a private investigator and further discovery, Ms. Chadwick determined: (1) one of the principals of Maison Blanche returned $869,106.00 from Gibraltar to an American bank account in Chadwick's name, and the funds were used to purchase three annuity contracts; (2) $995,726.41 had been transferred to a Union Bank account in Switzerland in Chadwick's name; and (3) $550,000.00 in stock certificates Chadwick claimed he had transferred to an unknown barrister in England to forward to Maison Blanche were never received. *Id.* at 3; *Chadwick v. Hill,* No. 2192 Philadelphia 1996 at 2 n.1 (Pa. Super. Ct. Apr. 23, 1997) ("*Chadwick II*"). The state court

entered a freeze order on the marital assets on April 29, 1994.

In May, 1994, Chadwick redeemed the annuity contracts and deposited the funds in a Panamanian bank. *See Chadwick II,* at 2 n.1. On July 22, 1994, the state court held a hearing at which Chadwick and his counsel were present. After hearing testimony regarding disposition of the $2,502,000.00 sent to Gibraltar, the court determined Chadwick's transfer of the money was an attempt to defraud Ms. Chadwick and the court. On the day of the hearing, the court ordered Chadwick to return the $2,502,000.00 to an account under the jurisdiction of the court, pay $75,000.00 for Ms. Chadwick's attorney's fees and costs, surrender his passport and remain within the jurisdiction. *See id.* at 3.

Chadwick refused to comply with the July 22, 1994 order; Ms. Chadwick filed a petition for contempt. The state court held contempt hearings on August 29, 1994, October 18, 1994, and October 31, 1994. Chadwick failed to appear at any of the hearings, but his attorney was present. *See id.* The state court found Chadwick in contempt of the July 22, 1994 order and issued a bench warrant for his arrest.

Chadwick, learning a bench warrant had been issued, fled the jurisdiction but was arrested and detained on April 5, 1995. The state court then determined Chadwick had the present ability to comply with the terms of the July 22, 1994 order and set bail at $3,000,000.00. *See Chadwick I,* at 4. Chadwick could have been released from custody at any time either by posting bail or purging his contempt by compliance with the July 22, 1994 order to

deposit $2,502,000.00 in the court's account; to date, he has done neither.

On April 7, 1995, Chadwick filed in federal court an emergency motion to quash the state court bench warrant and release him from Delaware County Prison because the contempt finding was improper under state law. This court declined to intervene in a pending state court proceeding under *Younger v. Harris,* 401 U.S. 37 (1971) and progeny. *See Chadwick v. Delaware County Court of Common Pleas,* No. 95-0103, 1995 WL 232500, at *2 (E.D. Pa. Apr. 19, 1995).

Chadwick has filed six state petitions for habeas relief; the trial court denied them all. He appealed one denial and his latest denial was subject to appeal, but before the appeals were decided, Chadwick filed a second federal habeas petition; this court dismissed the second federal habeas petition for failure to exhaust available state remedies because the issues had not yet been presented to the Pennsylvania Supreme Court. *See Chadwick v. Hill,* No. 95-0103, 1995 WL 541794, at *1 (E.D. Pa. Sept. 8, 1995).

Several appeals of state trial court denials of his habeas petitions and a motion to vacate state court orders were consolidated on appeal. The Pennsylvania Superior Court, affirming the lower court decisions in August, 1996, found that he was able to comply with the July, 1994 Order. *See Chadwick I.* The Superior Court held that: (1) the trial court had jurisdiction to find Chadwick in contempt; (2) the procedure used by the trial court in the contempt proceedings was not improper; (3) the trial court did not err in adjudicating Chadwick in contempt; (4) state statutory provisions governing criminal contempt were

inapplicable; (5) Chadwick was not illegally incarcerated; and (6) Chadwick's incarceration had not ceased to be coercive in nature. *Id.* Chadwick's petition for allowance of appeal to the Supreme Court of Pennsylvania was denied on April 8, 1997.

Chadwick's sixth petition for state habeas relief argued that his continued confinement deprived him of due process because it had become punitive rather than coercive; it was denied by the trial court on June 21, 1996. While appealing that determination, Chadwick filed a third federal habeas petition on September 23, 1996. By Memorandum and Order dated January 16, 1997, this court dismissed Chadwick's third federal habeas petition for failure to exhaust available state remedies and abstained because of the pending appeal to the Superior Court. *See Chadwick v. Hill,* No. 96-6426, 1997 WL 22406, at *2 (E.D. Pa. Jan. 16, 1997).

The Pennsylvania Superior Court affirmed the trial court's denial of Chadwick's sixth state habeas petition by Opinion dated April 23, 1997. *See Chadwick II.* The court encouraged the Supreme Court of Pennsylvania to review its decision to clarify the point at which a coercive penalty for civil contempt becomes a criminal sanction requiring due process under federal and state law. *See id.* at 6 (it "is for our high court to make such a determination.").

Chadwick did not seek review by the Pennsylvania Supreme Court, but instead sought reconsideration of this court's January 16, 1997 decision dismissing his federal habeas petition for non-exhaustion of state remedies. This court, finding the Superior Court specifically "invited" the Pennsylvania Supreme Court to review its decision and that Chadwick had not yet presented his due process

claims to the Supreme Court for review, denied Chadwick's motion for reconsideration on May 23, 1997. The court held that "the question of when civil contempt becomes punitive is one which a federal court should abstain from considering before the state supreme court has had the opportunity." May 23, 1997 Order at ¶ 10.

Chadwick declined to seek Supreme Court review of the Superior Court's April 23, 1997 decision. Instead, Chadwick filed his fourth federal habeas petition on July 18, 1997. He argued his continued detention in the Delaware County Prison served only a punitive purpose so that he was no longer imprisoned for civil contempt and must be afforded the protections and procedures obligatory for criminal sanctions. That petition was dismissed for failure to exhaust available state remedies on April 30, 1998. *See Chadwick v. Andrews,* No. 97-4680, 1998 WL 218026 (E.D. Pa. Apr. 30, 1998).

In September, 1999, Chadwick, filing a *pro se* Application for Leave to File Original Process (his seventh state habeas petition) with the Supreme Court of Pennsylvania, asserted, *inter alia,* that he had been denied due process of law and his continued incarceration had ceased to be coercive but was punitive. This request was granted on February 8, 2000; the petition for habeas corpus was summarily denied on the same date. Chadwick had also filed a petition for release in the Delaware Court of Common Pleas on the ground that he was suffering from "major psychological depression," and unable to participate in his divorce proceedings. After a hearing, on September 22, 1999, the state court trial judge was "convinced that Mr. Chadwick is feigning mental illness in an effort to be released from prison without returning the $2,500,000 which he transferred out of this country." *Chadwick v.*

Chadwick, No. 92-19535, slip op. at 4 (Ct. Com. Pl., Del. Cty., Pa. Sept. 22, 1999).

On March 2, 2000, Chadwick filed this, his fifth federal habeas petition. On December 8, 2000, Judge Rapoport issued an R & R to which Chadwick filed timely objections.

On April 4, 2001, Chadwick filed his eighth state court habeas petition. A hearing on the petition was held on April 11, 2001, at the conclusion of which the petition was dismissed. Because Chadwick may now appeal that dismissal, on April 18, 2000, Ms. Chadwick filed a motion to dismiss Chadwick's fifth federal habeas petition for failure to exhaust state court remedies.

A hearing was held on April 20, 2001, at which both Chadwick and Ms. Chadwick were heard on Chadwick's fifth federal habeas petition and Ms. Chadwick's motion to dismiss. For the reasons set forth herein, the Intervenor's motion to dismiss will be denied and the petition for habeas corpus will be granted.

DISCUSSION

I. Motion to Dismiss

"An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the State. . . . " 28 U.S.C.A. § 2254(b)(1)(A) (West 1994 & Supp. 2001). *See also Duckworth v. Serrano,* 454 U.S. 1, 3 (1981); *Roberts v. LaVallee,* 389 U.S. 40, 42 (1967); *Codispoti v. Howard,* 589 F.2d 135, 140 (3d Cir. 1978). The exhaustion requirement is not met if the

petitioner "has the right under the law of the State to raise, by any available procedure, the question presented." 28 U.S.C.A. § 2254(c) (West 1994 & Supp. 2001). The exhaustion requirement has been met when the petitioner has presented his claims to the highest state court; there is no requirement that the state courts consider or discuss the claims. *See Swanger v. Zimmerman,* 750 F.2d 291, 295 (3d Cir. 1984).

A petitioner need only seek state court review of a federal claim once, either on direct review or in a state habeas proceeding; repeated review is not necessary to satisfy the exhaustion requirement. *See Duckworth v. Serrano,* 454 U.S. 1, 4 n.1 (1981) ("repetitious applications to state courts" not required); *Codispoti v. Howard,* 589 F.2d 135, 142 (3d Cir. 1978) (same).

Chadwick's seventh state habeas petition, a direct appeal to the Supreme Court of Pennsylvania, presented the following issues: (1) Chadwick's imprisonment for failure to comply with a court order was contrary to due process because he was unable to comply with the order; (2) Chadwick was incarcerated without a jury trial or the presumption of innocence, contrary to due process; (3) the summary nature of the contempt proceedings deprived Chadwick of due process; (4) the order of imprisonment was facially invalid because it failed to specify a condition upon the fulfillment of which Chadwick's imprisonment would terminate; (5) the denial of Chadwick's right to appeal the adjudication of contempt and sanction of imprisonment violated his due process rights; (6) imprisonment for the nonpayment of money was a deprivation of due process; (7) civil confinement in excess of 50 months is a deprivation of due process; (8) imprisonment for violation of a court order issued without jurisdiction was a

deprivation of due process; and (9) Chadwick's imprisonment was and still is punitive rather than coercive. These are the same issues raised in the petition presently before this court. Because the issues have now been presented to the highest state court, they have been exhausted. *See Swanger,* 750 F.2d at 295 ("[t]he exhaustion requirement . . . has been judicially interpreted to mean that claims must have been presented to the state courts; they need not have been considered or discussed by those courts."). Intervenor's motion to dismiss for failure to exhaust available state remedies will be denied.

II. Chadwick's *Habeas Corpus* Petition

A. Standard of Review

The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), 28 U.S.C. § 2254, requires a federal court considering a habeas petition to afford state court determinations great deference. Habeas petitions filed since the enactment of AEDPA require a two-step analysis. *Matteo v. Superintendent, SCI Albion,* 171 F.3d 877, 891 (3d Cir. 1999) (en banc), *cert. denied, Matteo v. Brennan,* 528 U.S. 824 (1999). First, the federal court must determine whether the state court's decision was contrary to Supreme Court precedent. *Id.* Second, if the state court's decision was not contrary to Supreme Court precedent, the court must determine whether the state court decision represents an unreasonable application of Supreme Court precedent. *Id.*

B. Chadwick's Continued Imprisonment Represents an Unreasonable Application of Supreme Court Precedent: It Has Lost Its Coercive Effect and Is Now Impermissibly Punitive

Magistrate Judge Rapoport was of the opinion that Chadwick's imprisonment (now eighty months in duration) is still not impermissibly punitive. R & R at 31. Chadwick, objecting, argues that Judge Rapoport should have relied on *In re Grand Jury Investigation,* 600 F.2d 420 (3d Cir. 1979) (civil contempt is only permissible as long as it has coercive effect).

1. *Civil vs. Criminal Contempt*

Imprisonment until the incarcerated party performs a required act he or she has refused to perform is civil in nature; imprisonment for a definite term as punishment for doing a forbidden act is criminal in nature. *Gompers v. Buck's Stove & Range Co.,* 221 U.S. 418, 443 (1911) (reversing contempt sanctions of incarceration ranging from six to twelve months for violating an injunction; criminal sanctions could not be imposed in a civil proceeding). *See also International Union, United Mine Workers v. Bagwell,* 512 U.S. 821, 826-27 (1984).

> Civil confinement
>
> > is ordered where the defendant has refused to do an affirmative act required by the provisions of an order which, in either form or substance, was mandatory in its character. Imprisonment in such cases is not inflicted as a punishment, but is intended to be remedial by coercing the defendant to do what he refused to do. The decree in such cases is that the defendant stand committed

> unless or until he performs his affirmative act required by the court's order.

Gompers, 221 U.S. at 442. *See also Bagwell,* 512 U.S. at 827. Civil contempt sanctions can become punitive over time, if the coercive force has been lost. *See In re Grand Jury Investigation,* 600 F.2d at 423.

Chadwick's argument is that the length of his imprisonment has transformed the Delaware County Court's contempt sanction from coercive to punitive; the six and a half years he has spent in prison belie the assertion that continued incarceration will coerce him to comply with the court's order. The state courts, presented with this argument, have disagreed.

Judge Rapoport, relying on dicta in *Bagwell,* also disagreed. In *Bagwell,* contempt fines totaling over $64 million were levied against a mine workers' union for violation of an injunction. The Court determined this sanction was criminal in nature because the fines were meant to be punitive and vindicate the court's authority. *Bagwell,* 512 U.S. at 828, 838.

To illustrate the punitive nature of the sanction imposed on the union, the *Bagwell* Court contrasted it with the "paradigmatic" civil contempt sanction: incarceration of a contemnor indefinitely until affirmative compliance with a court order to pay alimony or surrender property. *Id.* at 828. The contempt sanction imposed on Chadwick is such a "paradigmatic" sanction for civil contempt. Chadwick's incarceration was imposed to coerce his compliance with a court order to deposit marital funds with the court. The duration of his confinement has been entirely in Chadwick's hands; complying with the court

order is the key to the jailhouse door. *See Gompers,* 221 U.S. at 442; *Bagwell,* 512 U.S. at 844.

Chadwick argues that even if his incarceration were initially civil in nature, it has since become punitive. He relies on *In re Grand Jury Investigation,* where a prisoner, brought before a grand jury, refused to testify. For this refusal, he was held in civil contempt. The presiding judge ordered him confined until he agreed to testify; the duration of his imprisonment was not to exceed the term of the grand jury or eighteen months. The sentence under which he had been incarcerated was suspended during that period. The contemnor, seeking release from civil confinement after only three months, argued there was no substantial likelihood he would ever testify before the grand jury; his request for an evidentiary hearing to prove this was denied.

On appeal, the court explained that "[s]ince it is impossible to succeed in coercing that which is beyond a person's power to perform, continued incarceration for civil contempt 'depends upon the ability of the contemnor to comply with the court's order.'" *In re Grand Jury Investigation,* 600 F.2d at 423 (quoting *Maggio v. Zeitz,* 333 U.S. 56, 76 (1948)). Confinement for coercive purposes becomes punitive once the coercive force is lost. *Id.*

The court held that the defiant witness' history of silence was insufficient to show that the sanction had lost its coercive force; there was still a chance he would change his mind and decide to testify before the grand jury. *Id.* at 428. "[T]he civil contempt power would be completely eviscerated were a defiant witness able to secure his release merely by boldly asserting that he will never comply with the court's order." *Id.* at 425. His three

months of confinement had not lost its coercive force and become punitive in nature. The court did not terminate his confinement.

The maximum amount of time the defiant witness in *In re Grand Jury Investigation* would have had to spend incarcerated for his civil contempt was only eighteen months; there was a certain end to the sanction imposed. Chadwick's incarceration is indefinite in duration. The difficulty lies in the determination when coercive imprisonment actually ceases to be coercive and becomes punitive; no clear line exists. The Supreme Court of Pennsylvania has declined to rule on this issue and the United States Supreme Court has not pronounced an exact measure.

The duration of Chadwick's incarceration has always been up to him; compliance with the state court order would guarantee his release. Chadwick disagrees; he argues: (1) he does not have the present ability to comply, so his incarceration is indefinite; and (2) even if he did have the ability to comply, the six years and four months he has spent in prison for his failure to comply strongly suggests that further incarceration will have no coercive effect. Chadwick contends the line between coercive and punitive imprisonment has been crossed.

State courts have repeatedly found that Chadwick has the present ability to comply with the order to remit marital assets to a court escrow account for equitable distribution.[2] Under AEDPA, this court is bound by those

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[2] Judge Joseph Battle had found on at least three occasions that Chadwick had the present ability to comply. *See Chadwick v. Chadwick,*

(Continued on following page)

determinations absent rebuttal of the presumption of correctness of state court findings by clear and convincing evidence. *See* 28 U.S.C.A. § 2254(e)(1) (West 1994 & Supp. 2001).[3] The record below clearly demonstrates that the state court findings were not erroneous.[4] This court is

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No. 92-19535, slip op. at 4, 5 (Ct. Com. Pl., Del. Cty., Pa. Sept. 22, 1999) (Chadwick feigning mental illness in effort to be released without remitting the marital funds; his refusal to sign authorizations to allow third parties to trace the funds establishes he still has control over them); *Chadwick v. Hill,* No. 96-6154, slip op. at 3 (Ct. Com. Pl., Del. Cty., Pa. June 21, 1996) ("As stated in two previous opinions . . . , this court has found [Chadwick's] testimony, that he did not have control of the disputed funds or knowledge of the whereabouts of the disputed funds, to be incredible;" he could comply and may still comply); *Chadwick v. Hill,* No. 95-80202, slip op. at 8 (Ct. Com. Pl., Del. Cty., Pa., Sept. 20, 1995) ("It is abundantly clear that [Chadwick] still has control over the disputed marital funds and certainly has the ability to comply with [the] July 22, 1994 order.").

The Superior Court has also found that Chadwick has the ability to comply. *See Chadwick v. Hill,* No. 96-19535, slip op. at 6 (Pa. Super. Ct. Apr. 23, 1997) ("After careful review, we would agree that the record supports the trial court's conclusion that [Chadwick] not only has the present ability to comply but also that there is a realistic possibility that he will comply with the order."); *Chadwick v. Chadwick,* Nos. 95-1555, 95-3612, 95-3773, 96-963, slip op. at 12 (Pa. Super. Ct. Aug. 22, 1996) ("Because [Chadwick] clearly holds the keys to the jailhouse door, we find that the sanctions imposed on him have not lost their coercive effect.").

[3] This subsection of the AEDPA states: "In a proceeding instituted by a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination of a factual issue made by a State court shall be presumed to be correct. The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence." 28 U.S.C.A. § 2254(e)(1).

[4] As recently as April 11, 2001, Judge Kenneth A. Clouse suggested a compromise: former President Judge Francis J. Catania would be appointed as Chadwick's guardian to trace the assets at issue. Chadwick would cooperate with former Judge Catania by providing him with all information and materials necessary to effectuate the search.

(Continued on following page)

convinced that Chadwick has the present ability to comply with the July 22, 1994 order.

After what is now nearly seven years' incarceration for failure to comply, there is a serious question whether confinement is still serving a coercive purpose. After this significant period of time, there exists more than Chadwick's mere assertion that further confinement will not coerce compliance. *See In re Grand Jury Investigation,* 600 F.2d at 425. The state courts have repeatedly determined that Chadwick's incarceration has not lost its coercive force.[5] This court must determine whether that

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Once former Judge Catania certified that Chadwick had cooperated and he had all the information necessary to conclude the investigation, Chadwick would be released. Chadwick refused this compromise; he would not agree unless his release were contingent only upon his delivering the requested documents to former Judge Catania. *See Chadwick v. Chadwick,* No. 92-19535, April 11, 2001 Hearing, Tr. at 4, 8.

Twice in August, 1995, Chadwick declined to provide authorization to allow third parties to investigate his assets or to allow the IRS to release his 1993 tax return. *See Chadwick v. Hill,* No. 95-80160, August 17, 1995 Hearing, Tr. at 74; *Chadwick v. Hill,* No. 95-80160, August 8, 1995 Hearing, Tr. at 22-23.

Chadwick's refusals to allow investigation of the funds without his release from custody suggests that he is concerned the assets will be found; if he is released upon signing authorizations, he could locate and secrete the assets, prevent them from being found and remitted to the court. He prefers to remain incarcerated rather than allow his former wife to receive an equitable allotment of the marital assets. This suggests that Chadwick will continue to do all in his power to keep that money hidden and beyond the jurisdiction of the Delaware County Court.

[5] After Chadwick had been incarcerated for five months, Judge Joseph Battle held that the contempt sanction imposed was civil in nature; Chadwick was jailed for failure to pay a debt. *See Chadwick v. Hill,* No. 95-80202, slip op. At 9 (Ct. Com. Pl., Del. Cty., Pa. Sept. 20,

(Continued on following page)

conclusion is contrary to Supreme Court precedent, and if not, whether it is an unreasonable application of Supreme Court precedent.

If, as Chadwick contends, the confinement has lost its coercive force, it has become punitive. *See In re Grand Jury Investigation,* 600 F.2d at 423-24. The burden is on Chadwick to show that there is no "substantial likelihood" that compliance will be the result of continued incarceration. *Id.* at 425. His obstinacy during more than six and half years of imprisonment is persuasive that Chadwick will never voluntarily deposit the disputed funds with the court; it seems clear he is willing to remain incarcerated for life rather than allow his ex-wife access to a share of the funds.

The state court conclusions on this issue on at least five occasions, from five months after his confinement until the Pennsylvania Supreme Court's summary denial

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1995). Nine months later, Judge Battle held that "the coercive sanctions imposed may yet cause [Chadwick] to ultimately comply with [the] July 22, 1994 order and therefore, [Chadwick's] contempt is not punitive in nature. . . . " *Chadwick v. Hill,* No. 96-6154, slip op. At 5 (Ct. Com. Pl., Del. Cty., Pa. June 21, 1996). Two months after that, the Superior Court found that "the sanctions imposed on [Chadwick] have not lost their coercive effect." *Chadwick v. Chadwick,* Nos. 95-1555, 95-3612, 95-3773, 96-963, slip op. At 12 (Pa. Super. Ct. Aug. 22, 1996). After Chadwick had been incarcerated for over two years, the Superior Court still found the contempt was coercive in nature, holding that "there is a realistic possibility that [Chadwick] will comply with the order." *Chadwick v. Hill,* No. 96-19535, slip op. at 6 (Pa. Super. Ct. Apr. 23, 1997). The Pennsylvania Supreme Court's summary denial of Chadwick's petition for writ of habeas corpus after Chadwick had been incarcerated for almost five years implies that it, too, considered the imprisonment still coercive in nature. *See Chadwick v. Goldberg,* No. 99-223, Order (Pa. Feb. 9, 2000).

after he had been imprisoned for almost five years, were not contrary to Supreme Court precedent; no bright line rule exists for making such a determination. The Pennsylvania Supreme Court's summary denial in February, 2000, implies its conclusion that the confinement had not then crossed the line from coercive to punitive, but without an explanation of the denial, this court does not know why.

Now, after nearly seven years, it is no longer reasonable to conclude Chadwick's continued confinement might still result in compliance with the July 22, 1994 order. Chadwick's continued incarceration cannot be rationalized under *Gompers* or *Bagwell* in light of Chadwick's clear and convincing proof there is no "substantial likelihood" that his remaining in custody will result in his compliance; his confinement, no longer coercive, is an unreasonable application of Supreme Court precedent.

2. *Due Process*

The protracted duration of his incarceration could not have been foreseen by the state court when civil confinement was imposed. The state contempt proceedings were adequate for the imposition of a civil sanction to coerce compliance. However, after such an extensive time period, Chadwick cannot remain incarcerated without the due process attendant to imposition of criminal sanctions.[6] As the Supreme Court recently held,

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[6] The full panoply of procedural protections attendant to an allegation of criminal conduct apply. An alleged criminal contemnor is entitled to counsel and proof of contempt beyond a reasonable doubt; if the sanction involves more than six months' incarceration, the alleged

(Continued on following page)

> The Fifth Amendment's Due Process Clause forbids the Government to 'deprive' any 'person . . . of . . . liberty . . . without due process of law.' Freedom from imprisonment – from government custody, detention, or other forms of physical restraint – lies at the heart of the liberty that Clause protects. And . . . government detention violates that Clause unless the detention is ordered in a criminal proceeding with adequate procedural protections, or, in certain special and narrow non-punitive circumstances, where a special justification, such as harm-threatening mental illness, outweighs the individual's constitutionally protected interest in avoiding physical restraint.

See Zadvydas v. Davis, 121 S.Ct. 2491, 2498-99 (2001) (holding an alien may be held pending deportation by the Immigration and Naturalization Service under 8 U.S.C. § 1231 for up to six months, but not indefinitely, without the due process of law afforded in a criminal proceeding) (internal citations omitted). There is no such special justification in this case. Nothing excuses Chadwick's continued defiance of a court order, but his incarceration has crossed the line from coercive to punitive and Constitutional requirements of due process compel his release.

Although Chadwick may not remain incarcerated without due process, his intractability should not be permitted to thwart the authority of a valid court order. The Delaware County Court is not without the power to

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contemnor has the right to trial by jury. *See Bagwell,* 512 U.S. at 826-27, 834.

institute criminal proceedings against Chadwick (such as a perjury or criminal contempt prosecution). *See In re Grand Jury Investigation,* 600 F.2d at 425.

II. Remaining Grounds For *Habeas* Relief

The court agrees with the remainder of the R & R that Chadwick was not denied due process for any of the reasons alleged and that the state law-based claims are not subject to federal habeas review; he is not entitled to habeas relief on any of the other grounds asserted in his petition.

CONCLUSION

Intervenor's motion to dismiss for failure to exhaust available state remedies is denied. Chadwick has previously presented his current claims to the Supreme Court of Pennsylvania; the fact that he can now appeal the state court's most recent April 11, 2001 denial of his eighth state habeas petition is not an impediment to federal habeas review.

For eighty months, Chadwick has refused to comply with a valid state court order to deposit $2,500,000.00 in marital assets with the court; this renders unreasonable the belief that continued incarceration will have a coercive effect. Chadwick has the present ability to comply, but the duration of his imprisonment has crossed the line from coercive to punitive, and requires his release. Chadwick

should be afforded due process in any proceeding to impose additional criminal sanctions.

An appropriate Order follows.[7]

[7] The government does not need a certificate under 28 U.S.C. § 2253(c)(1) to appeal this decision. *United States ex rel. Tillery v. Cavell,* 294 F.2d 12, 15 (3d Cir. 1961) ("The requirement that a certificate issue before an appeal could be taken was plainly a device to reduce appeals from decisions in favor of states or their officers not their appeals from decisions against them.") The rationale of *Tillery* applies equally to Ms. Chadwick as Intervenor: since petitioner prevails, the court need not issue a § 2253(c)(1) certificate before Ms. Chadwick may take an appeal.

APPENDIX C

IN THE SUPREME COURT OF PENNSYLVANIA MIDDLE DISTRICT

H. BEATTY CHADWICK,	:	No. 223
Petitioner	:	M.D. Misc. Dkt. 1999
	:	
v.	:	
IRWIN GOLDBERG, WARDEN,	:	
	:	
Respondent	:	

ORDER

PER CURIAM:

AND NOW, this 8th day of February, 2000, the request for leave to file original process and the request to file an answer are granted and the Petition for Writ of Habeas Corpus is denied.

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

02-1173

H. BEATTY CHADWICK

v.

JAMES JANECKA, WARDEN, DELAWARE COUNTY PRISON; THE DISTRICT ATTORNEY OF COUNTY OF DELAWARE; THE ATTORNEY GENERAL OF THE STATE OF PENNSYLVANIA

v.

BARBARA JEAN CROWTHER CHADWICK,
(Intervenor in District Court)

BARBARA JEAN CROWTHER CHADWICK,
Appellant

SUR PETITION FOR REHEARING

Present: BECKER, Chief Judge, SLOVITER, SCIRICA, NYGAARD, ALITO, ROTH, McKEE, BARRY, AMBRO, and FUENTES, Circuit Judges, and WALLACE, Senior Circuit Judge*

The petition for rehearing filed by appellants in the above entitled case having been submitted to the judges who participated in the decision of this court and to all the

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* As to panel rehearing only.

other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court en banc, the petition for rehearing is denied. Chief Judge Becker would have granted rehearing.

By the Court,

/s/ Samuel Alito
Circuit Judge

DATED: DEC 4 2002

APPENDIX E

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 02-1173

H. BEATTY CHADWICK

v.

JAMES JANECKA, WARDEN, DELAWARE COUNTY PRISON; THE DISTRICT ATTORNEY OF COUNTY OF DELAWARE; THE ATTORNEY GENERAL OF THE STATE OF PENNSYLVANIA

v.

BARBARA JEAN CROWTHER CHADWICK,
(Intervenor in District Court)

BARBARA JEAN CROWTHER CHADWICK,
Appellant

ON APPEAL FROM THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

District Court Judge: Honorable Norma L. Shapiro
(D.C. No. 00-cv-01130)

Argued: May 24, 2002

Before: ALITO, MCKEE, WALLACE, Circuit Judges*

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the Eastern District of Pennsylvania and was argued on May 24, 2002. On consideration whereof, it is now here ORDERED and ADJUDGED by this court that the Judgment of the District Court entered on January 4, 2002, be and the same is hereby, REVERSED. Costs taxed against appellee. All of the above in accordance with the opinion of this Court.

ATTEST:

/s/

Acting Clerk

Dated: August 20, 2002

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* The Honorable J. Clifford Wallace, Senior Judge of the United States Court of Appeals for the Ninth Circuit, sitting by designation.

APPENDIX F

IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY, PENNSYLVANIA

CIVIL ACTION – LAW

BARBARA CROWTHER CHADWICK,	)	
Plaintiff,	)	**No. 92-19535**
	)	**In Divorce**
v.	)	
	)	**Attorneys Nos.**
H. BEATTY CHADWICK,	)	**04774/35386/63126**
Defendant.	)	

ORDER

AND NOW, this 22nd day of July 1994, upon consideration of Wife's Emergency Omnibus Petition For Special Relief, it is hereby ORDERED and DECREED that:

1. Within twenty-four (24) hours of the entry of this Order, H. Beatty Chadwick is directed to return the $2.5 million that he transferred out of the United States in February, 1993, to an account under the jurisdiction of this court, to be held in escrow by counsel for Barbara Jean Crowther Chadwick and counsel for H. Beatty Chadwick pending further Order of the Court.

2. Husband is enjoined from further assigning, concealing, secreting or dissipating marital assets;

3. The marital home located at 280 Roberts Road, Bryn Mawr, Pennsylvania, shall immediately be listed for sale by a court-appointed third party;

4. Husband is directed to pay, forthwith on account of Wife's counsel fees and costs the amount of $75,000.00;

5. Husband is directed to surrender his passport to this Court pending further Order of the Court;

6. Husband is enjoined from leaving the jurisdiction of this Commonwealth until further Order of Court.

7. This matter including a transcript of the testimony shall be referred to the Delaware County District Attorney's Office and to the U.S. Attorney for a consideration of possible or of criminal charges.

BY THE COURT:

/s/ Joseph Labrum
J.

APPENDIX G

IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY, PENNSYLVANIA

CIVIL ACTION – LAW

BARBARA CROWTHER CHADWICK,	)	
Plaintiff,	)	
	)	**No. 92-19535**
v.	)	
	)	**In Divorce**
H. BEATTY CHADWICK,	)	
Defendant.	)	

ORDER

Counsel for the parties were advised by this Court that a hearing would be held on Barbara Jean Crowther Chadwick's Petition for Contempt and for Writ of Ne Exeat or Writ of Capias Ad Satisfaciendum on Monday, October 31, 1994 at 10:00 A.M. Defendant, H. Beatty Chadwick was personally served with a subpoena directing his appearance at that hearing and his attorney was served with a Notice to Attend and to Produce directing H. Beatty Chadwick's appearance at that hearing. Defendant, H. Beatty Chadwick, was represented by David Auerbach at that hearing on October 31, 1994. Defendant, H. Beatty Chadwick, did not appear at the hearing on October 31, 1994.

Upon consideration of the Petition for Contempt and for Writ of Ne Exeat or Writ of Capias Ad Satisfaciendum, and after hearing thereon, it is hereby ORDERED and DECREED as follows:

1. H. Beatty Chadwick is held in Contempt of Court for willful violations of the Order of July 22, 1994. He is to be apprehended and incarcerated until a further hearing is held.

2. Because of defendant H. Beatty Chadwick's failure to appear at the scheduled October 31, 1994 hearing, notwithstanding valid service of a subpoena directing his appearance, this Court has issued a bench warrant for H. Beatty Chadwick's arrest. Said bench warrant shall not be rescinded without the approval of the undersigned judge. When apprehended, defendant, H. Beatty Chadwick, shall be incarcerated until a further hearing is held.

3. Defendant, H. Beatty Chadwick, is hereby enjoined from selling or in any way profiting from the release, publication, writing or other dissemination of the facts which are the subject of this litigation and any such rights or benefits are assigned to plaintiff, Barbara Jean Crowther Chadwick.

4. This matter is again referred to the Delaware County District Attorney's office and the United States Attorney's Office for possible prosecution of criminal charges against defendant, H. Beatty Chadwick.

5. Defendant, H. Beatty Chadwick, is again ordered to surrender his United States passport to this Court until further order. The State Department shall be notified of this Order and of the July 22, 1994 Order so that appropriate action may be taken, including the placing of a hold on H. Beatty Chadwick's United States passport. This Court has previously ordered that H. Beatty Chadwick shall not leave the Commonwealth of Pennsylvania, and shall not leave the United States.

6. This matter is referred to the Disciplinary Board of the Supreme Court of Pennsylvania for investigation of the ethical violations by H. Beatty Chadwick. This Court recommends to the Disciplinary Board that H. Beatty Chadwick's license to practice law be suspended as soon as possible.

DATED this 31st Day of October, 1994 at Media, Delaware County, Pennsylvania.

BY THE COURT

/s/ Joseph Labrum
Labrum, J.

11-2-94

APPENDIX H

Extract from Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254 filed March 2, 2000 with the United States District Court for the Eastern District of Pennsylvania.

* * *

12. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground.

Ground One: Pursuant to Judge Shapiro's directive petitioner filed a "seventh state habeas petition" which presented his claim that his confinement for over 50 months was unconstitutional.

Ground Two: Denial of due process by imprisonment for noncompliance with an Order with which petitioner was unable to comply. Petitioner was imprisoned because he was unable to pay $2,500,000 into a court administered account as the Court of Common Pleas directed petitioner to do. The record is lacking in proof that petitioner has the present ability to comply, beyond a reasonable doubt, the legal standard. Instead, the State Court reached its conclusions improperly by mere disbelief of petitioner.

Ground Three: Denial of due process since petitioner was not afforded a jury trial and other procedural rights. Petitioner was not given the right to a jury trial on the critical issue of petitioner's ability to comply with the Court's Order. Instead, this issue was decided against petitioner by the same court which was imposing punishment. Moreover, the State court placed upon petitioner the burden of proving the inability to comply, thus denying petitioner the presumption of innocence.

Ground Four: Denial of due process by summary nature of proceedings which adjudicated petitioner's imprisonment. The proceedings were called by the State court sua sponte and petitioner did not have notice of their purpose or the relief sought. There were no pleadings, arguments, briefs, submission of findings or the usual parts of a court trial as required by law.

Ground Five: Denial of due process to imprison petitioner where the imprisonment has become punitive. The duration of imprisonment at over 58 months now clearly has caused it to cease to be coercive, if ever it could have been, and to become punitive. The term is longer than that served for serious felonies. Moreover, the State court has treated the imprisonment as punitive, setting bail on its own motion at $3 million and failing to set a condition for petitioner's release, as well as placing petitioner in restrictive confinement with those accused and convicted of felonies.

Ground Six: Denial of due process to imprison petitioner for the nonpayment of money. The imprisonment to which petitioner is subject is essentially to coerce the payment of money. Such a purpose is contrary to current notions of due process since other means to collect monies are available at law.

Ground Seven: Denial of due process to imprison petitioner indefinitely in a civil action. Due process considers depriving a person of liberty to be a deprivation of a fundamental right which is warranted only as punishment for a crime or compelling State purpose which has not been demonstrated. In our jurisprudence civil confinement has been limited to mentally ill persons who are a danger to themselves or others.

Ground Eight: Denial of due process since the order by which petitioner is imprisoned is unlawful on its face. The order fails to specify a condition upon the fulfillment of which petitioner's imprisonment will terminate. On the contrary, the Order requires petitioner to remain imprisoned "until a further hearing is held." This authorizes indefinite imprisonment at the sole discretion of the Court. Nearly five years later, the "further hearing" contemplated by the Order apparently has never been held.

Ground Nine: Denial of due process to imprison petitioner for alleged violation of an Order which the Court lacked jurisdiction to issue. The payment order, as to which petitioner was adjudicated in violation, was issued under the power in the state divorce code to grant "special relief" prior to a hearing on and Decree of Divorce. The unprecedented use of this power to augment marital assets is not authorized by state law which authorizes only injunctions *against* the transfer of assets.

Ground Ten: Denial of due process because petitioner was denied a prompt appeal. Petitioner filed a timely appeal of the State court Order which ordered him to pay the $2,500,000 and the State court Order which adjudicated him in contempt and directed his imprisonment. The appeals were quashed, however, because the orders were deemed interlocutory and not final.

* * *

Supreme Court, U.S.
FILED

02 1346 FEB 13 2003

OFFICE OF THE CLERK

No. _____

In The

Supreme Court of the United States

H. BEATTY CHADWICK,

Petitioner,

v.

BARBARA JEAN CROWTHER CHADWICK,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

SUPPLEMENTAL APPENDIX

H. BEATTY CHADWICK
P.O. Box 23
Thornton, PA 19373
610-595-2740, ext. 317

34pp

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

H. BEATTY CHADWICK : CIVIL ACTION

v. : No. 00-CV-1130

JAMES JANECKA, et al : (Filed Dec. 11, 2000)

ARNOLD C. RAPOPORT
UNITED STATES MAGISTRATE JUDGE

REPORT AND RECOMMENDATION

Before the Court is a counseled petition for a writ of habeas corpus filed by H. Beatty Chadwick pursuant to 28 U.S.C. §2254. The Petitioner is currently incarcerated in the Delaware County Prison at Thornton, Pennsylvania. For the reasons that follow, it is recommended that this petition be dismissed and denied without an evidentiary hearing.

PROCEDURAL HISTORY

STATE COURT PROCEEDINGS:

This case arises from a pending divorce action in the Court of Common Pleas of Delaware County, Pennsylvania.[1] On November 23, 1992, Barbara Jean Crowther

[1] The facts set forth in this procedural history have been taken from the Petition for Writ of Habeas Corpus, the District Attorney's Response, the Motion for Leave to Intervene, the Motion to Dismiss the Petition, the petitioner's Reply and Memorandum, the Intervenor's letter brief, the intervenor's brief in support of the motion to dismiss, the respondent's brief on the issue of exhaustion, the petitioner's brief on the issue of exhaustion, the briefs of the petitioner, intervenor and respondent on the merits, the respondents motion to dismiss him as a party, and the interenor's letter in response, the state court records

(Continued on following page)

Chadwick (Intervenor, hereinafter referred to as wife) filed a complaint in divorce against petitioner, requesting *inter alia* alimony *pendente lite* and equitable distribution of marital assets. At a conference held on February 23, 1993 the petitioner disclosed that on February 9, 1993 he had unilaterally transferred $2,502,000 to a Gibraltar company named Maison Blanche Limited to satisfy an alleged debt pursuant to a joint venture agreement allegedly entered into by petitioner on August 30, 1990, two years prior to the marital separation. Wife testified and continues to maintain that she had no knowledge of this joint venture agreement and only learned of the agreement, debt and transfer of funds from the petitioner's testimony on February 23, 1993. The transfer of funds allegedly consisted of funds from an Individual Retirement Account (IRA) in the amount of $869,106, funds from an investment account in the amount of $1,100,894, and $532,000 in securities. These assets comprised the bulk of the petitioner's property and are alleged by the wife to be marital property.

The petitioner testified at several hearings before the Court of Common Pleas of Delaware County that the assets were transferred only to satisfy his debt under the joint venture agreement, and that once the assets were transferred, he ceased any control or ownership rights over them. He continues to maintain that he does not possess the assets, nor have the ability to control the transferred assets.

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attached thereto, and the prior federal court habeas files, 95-CV-103 and 97-CV-4680.

Following the petitioner's disclosure of the transfer of assets, the wife filed an action with the Supreme Court of Gibraltar seeking the disclosure of the location of the assets and the names of the beneficial owners of Maison Blanche Limited. On March 2, 1994 the Supreme Court of Gibraltar entered an order directing Maison Blanche to disclose that information. A subsequent affidavit by purported counsel for Maison Blanche indicated that in February 1993 Maison Blanche received a total of $1,970,000 from an American securities firm, from which the petitioner had testified the securities were transferred; that on April 8, 1993 $896,106 of those funds were transferred from Maison Blanche to Chemical Bank in New York "for [an] account . . . in favour of H.B. Chadwick Account . . . "; that the rest of the money was transferred to other accounts, including a bank account in Luxembourg; and that $532,000 in securities was never transferred to Maison Blanche. (Affidavit of James David Hassan, April 26, 1994).

On April 27, 1994 the wife filed an emergency petition in the Court of Common Pleas of Delaware County to freeze the petitioner's assets and requested the return of the transferred assets. After a hearing on April 29, 1994 the court entered an order freezing all assets in the petitioner's name and ordering the petitioner to disclose his accounts.

On July 19, 1994 the wife filed an emergency petition for special relief requesting *inter alia* the return of the $2,502,000 originally transferred to Maison Blanche, and that they be deposited into a joint escrow account. Wife alleged in her petition, with documentation attached, that Maison Blanche transferred $869,106 to an account for benefit of H.B. Chadwick, which account was opened two

days prior to the transfer; that the funds were moved from this account to other accounts pursuant to the direct instructions of H.B. Chadwick; and that H.B. Chadwick transferred some of the funds after the April 29, 1994 order freezing his assets.

A hearing was held on July 22, 1994, during which the petitioner and wife testified. The wife maintained that she presented sufficient evidence to prove that the petitioner had full control over the $2,502,000 that he transferred to Maison Blanche. She testified that the exact amount that the petitioner had taken from his IRA was returned to the United States to an account for the benefit of H.B. Chadwick within sixty days of the original transfer, which was within the time allowed by the Internal Revenue Service to avoid penalties for early withdrawal. The petitioner objected to the brief notice he received prior to the hearing and to the admission of the wife's documentary evidence, which evidence was not admitted by the court.

At the conclusion of the hearing the court ordered that: 1. the petitioner return the $2,500,000 that he transferred out of the United States in February 1993 into an escrow account to be held by counsel; 2. the petitioner be enjoined from further assigning, concealing, secreting or dissipating marital assets; 3. the marital home be sold immediately; 4. the petitioner pay counsel fees and costs to the wife in the amount of $75,000; 5. the petitioner surrender his passport; 6. the petitioner be enjoined from leaving the jurisdiction of the Commonwealth of Pennsylvania; and 7. the matter be referred to the District Attorney's office and the United States Attorney's office for consideration of possible prosecution of criminal charges.

The petitioner appealed the order to the Pennsylvania Superior Court, which quashed the appeal in part as interlocutory on December 9, 1994, and in full on February 16, 1995.

On August 2, 1994 the wife filed a petition for contempt and for writ of *ne exeat* (forbidding the petitioner from leaving the jurisdiction) or for a writ of *capias ad satisfaciendum* (a writ of execution commanding the sheriff to take the party and keep him safely so that he may appear in court to satisfy the damages or debt, and deprives him of liberty until the debt is satisfied). In the petition the wife alleged that the petitioner failed to place $2,500,000 in escrow, failed to pay attorney's fees, failed to co-opereate with the sale of the marital residence, and failed to surrender his passport. She further alleged that she feared he would flee the country because $995,726.41 of the transferred funds were allegedly in an account in Luxembourg. She requested that the petitioner be incarcerated until he posted adequate security.

A hearing was held on August 29, 1994, for which the petitioner did not appear, but was represented by counsel. Counsel for the petitioner objected to the proceedings, especially since the appeal of the July 22, 1994 order was pending before the Superior Court. A bank employee testified that the petitioner was redeeming insurance policies and having the proceeds sent to himself. At the conclusion of the hearing the court entered an order finding the petitioner to be in contempt of court for failure to comply with the court's orders of April 29, 1994 and July 22, 1994. The court further directed that the petitioner's accounts be frozen and any funds in those accounts be paid to wife's attorney. The petitioner appealed this order to the Superior Court, which quashed the

appeal as the order was interlocutory on November 22, 1994.

On September 30, 1994 the wife filed another petitioner for *ne exeat*, alleging that it was necessary to detain the petitioner before he fled the jurisdiction. A hearing was held on October 18, 1994, which the petitioner failed to attend, but was represented by counsel. The *ne exeat* action was converted to a contempt proceeding, and a further hearing was held on October 31, 1994. The petitioner was personally served with a subpoena, and again failed to attend the hearing, but was represented by counsel. At the conclusion of the hearing the petitioner was again found in contempt for failing to comply with the terms of the July 22, 1994 order, and the court directed that he be found and arrested. By order dated November 2, 1994 the court issued a bench warrant for the petitioner's arrest and imprisonment until a further hearing was held.

The petitioner appealed the November 2, 1994 order to the Superior Court, which quashed the appeal as interlocutory on February 16, 1995.

Prior to the petitioner's arrest pursuant to the November 2, 1994 order, a conference setting a trial date for the economic claims of the divorce complaint was held on January 6, 1995. During that conference the court told the petitioner that he could purge himself of his contempt by producing $800,000.

On April 5, 1995 the petitioner was arrested for contempt, and has been incarcerated since April 6, 1995.

This case has an extensive history in the state court. On March 24, 1995, prior to his arrest, the petitioner filed

an emergency petition for vacation of sanctions of incarceration and bench warrant, alleging that: 1. the court's finding of contempt was improper in that it was not made in accordance with a proper procedure for a finding of contempt set forth in state case law, and that he was found in contempt for failing to perform that which he could not perform, i.e. the repayment of $2,500,000; 2. the order of incarceration was improper because a person may not be jailed under state law for the non-payment of money, and that a person may not be jailed for failure to obey a subpoena until such person has a hearing; and 3. he was deprived of his right to due process because he received inadequate notice prior to the July 22, 1994 and October 31, 1994 hearings, and that no evidence was taken regarding his contempt. A hearing was scheduled on this petition on April 12, 1995 after several postponements. In the meantime, the petitioner was arrested on the bench warrant and contempt order.

The emergency petition was denied following the April 12 hearing, and bail was set in the amount of $3,000,000 cash. Another hearing was held on April 20, 1995, and again the petitioner's request for release from prison was denied by order dated April 21, 1995.

The petitioner filed a timely appeal of this order with the Superior Court, raising the issues he presented in his emergency petition, and the following additional claims: 1. he was being detained beyond the time allowed by law because state statutory law allegedly provides for incarceration for *criminal* contempt may last no longer than fifteen days; 2. the Court of Common Pleas lacked the authority under the Pennsylvania Divorce Code to order the petitioner to pay into court assets already paid by him to satisfy a debt; 3. the court lacked the jurisdiction to

enter a contempt order based on relief set forth in the July 22, 1994 order when that order was on appeal to the Superior Court; 4. the contempt order did not specify how the petitioner could purge the contempt; and 5. incarceration for *civil* contempt is improper under state statutory law unless the contempt was committed in open court. By order dated August 22, 1996 the Superior Court affirmed in part, and quashed the remaining claims. The petitioner sought discretionary review in the Pennsylvania Supreme Court, which denied his request by order dated April 8, 1997.

Meanwhile, on or about April 21, 1995 the petitioner filed an application for extraordinary relief in the nature of a writ of prohibition in the Pennsylvania Supreme Court. His sole claim was that he was being incarcerated beyond the time allowed by law, alleging that he was being held for criminal contempt rather than civil contempt, and that state law provides that persons held for indirect criminal contempt may be held no longer than fifteen days. The Supreme Court denied the request on May 3, 1995.

On May 22, 1995 the petitioner filed a petition for special relief in the Court of Common Pleas requesting review of the July 22, 1994 and November 2, 1994 orders, as well as the lawfulness of his incarceration. That petition was denied on May 25, 1995.

The petitioner filed his first state habeas corpus petition on July 21, 1995, and a hearing was scheduled the next day. The petitioner testified that he no longer had control over the money to satisfy the court's July 22, 1994 order. The court refused to re-litigate the issue of the petitioner's credibility, and it did not accept the

petitioner's argument that his incarceration had become punitive rather than coercive. Thus, the court denied his petitioner.

The petitioner filed a motion for review of that order and an application for bail with the Superior Court, which was denied.

On July 25, 1995 the petitioner filed his second state habeas action, raising the same issues he raised before the Superior Court on appeal from the April 21, 1995 order, plus allegations that his incarceration violated state law and his Constitutional rights to due process and equal protection. It appears that a hearing was held on July 31, 1995 and continued to August 8, 1995. The petitioner filed three additional state habeas actions, all of which were denied. The denials were consolidated for appeal in the Superior Court, which affirmed the lower court.

The petitioner filed a sixth state habeas action seeking relief on the grounds that his imprisonment for contempt was punitive and there was no substantial likelihood that he would comply with the court's order because of his age, poor health, inability to practice law, lack of control over the assets, and the length of incarceration demonstrates that nothing will cause his compliance. Hearings were held on May 30 and June 3, 1996, after which the trial court denied the petition, adopting the findings of the five prior habeas courts regarding the petitioner's refusal to comply with the court order. The court concluded that the petitioner failed to provide any credible evidence that he had the inability to comply with the order.

The petitioner filed a timely appeal with the Superior Court, raising the following claims: 1. the writ should be

granted because civil contempt is no longer coercive in nature, but punitive in violation of due process; and 2. the trial judge erred in denying the petition after the petitioner demonstrated that he was unable to comply with the purging condition of the contempt. The Superior Court affirmed the decision of the trial court in a memorandum opinion filed April 23, 1997. In part, that opinion stated:

> Instantly, appellant cites to the fact that he has been incarcerated since April 5, 1995. He claims the length of his incarceration, his age, poor health, inability to pursue his career and repeated hearings where he has refused compliance suggests that there is no possibility that he will comply with the order. Appellant admits that no court in this jurisdiction has adopted this test and we will not do so here. While it seems reasonable that at some point a temporal benchmark should be adopted to determine when contempt incarceration becomes impermissibly punitive we think that it is for our high court to make such a determination.

Opinion, at 5-6. Despite the Superior Court's invitation to the state Supreme Court to decide the point at which contempt incarceration becomes punitive rather than coercive, the petitioner did not seek discretionary review by the state Supreme Court.

FEDERAL COURT PROCEEDINGS:

Meanwhile, two days after his arrest the petitioner filed an emergency motion in the United States District Court for the Eastern District of Pennsylvania seeking his release from prison pursuant to 42 U.S.C. § 1983. The

Honorable Norma L. Shapiro held an *ex parte* hearing, after which the Court determined that it should abstain from interference in a state matter pursuant to *Younger v. Harris*, 401 U.S. 37 (1971). By way of further explanation, the Court stated in a Memorandum dated April 18, 1995 that it would not grant the petitioner's emergency relief because: 1. a federal court should abstain from exercising jurisdiction in a pending state domestic relations matter involving divorce and equitable distribution of marital property; 2. the petitioner failed to allege irreparable harm in that he did not provide evidence or alleged that he challenged his incarceration or the court orders underlying his being held in contempt to the full extent in state court, or that there was any reason to conclude that the state courts would not uphold his Constitutional rights; 3. there is no justification for federal disregard of state court orders except under extraordinary circumstances, which the court did not find; and 4. it would not be in the public interest to countenance a party's willful failure to obey a subpoena to appear in court for personal reasons or to countenance a party's violation of a state court order.

On or about June 1, 1995 the petitioner filed an "Emergency Petition for Injunctive Relief or, in the Alternative, for Habeas Corpus" in this Court. He raised the following claims for relief: 1. the Court of Common Pleas exceeded its power under applicable law when it ordered him to pay $2,500,000 into court; 2. contempt may not be used to enforce the payment of money; 3. he was unable to comply with the order; 4. the adjudication of contempt did not comply with the five-step procedure regarding contempt matters required by state law; 5. he did not receive proper notice of or the opportunity to defend himself at the contempt proceeding because no petition was filed or

served on him which set forth the relief sought or basis thereof; 6. He is imprisoned for debt in violation of the Pennsylvania Constitution; 7. his incarceration exceeded the maximum term for criminal contempt; 8. the contempt order does not set forth the conditions for which the contempt may be purged; and 9. the incarceration for contempt for failure to obey a subpoena is contrary to the provisions of the Pennsylvania Rules of Civil Procedure. In his brief he raised additional issues: 10. the Court of Common Pleas lacked the jurisdiction to enter an order of contempt for failure to obey an order which was under appeal; and 11. his incarceration violates 42 Pa.C.S.A. §§ 4132 and 4133.

In a Report and Recommendation filed by the United States Magistrate Judge James R. Mellinson dated August 15, 1995 he recommended that the § 1983 action be denied and the habeas action be dismissed for failure to exhaust state court remedies. By order dated September 8, 1995, the Honorable Norma L. Shapiro denied relief under 42 U.S.C. § 1983, and dismissed the habeas action without prejudice for failure to exhaust state court remedies.

On September 23, 1996 the petitioner filed a petition for writ of habeas corpus in this Court alleging that his incarceration violates the Fifth and Fourteenth Amendment guarantees of due process because the order is no longer coercive, but punitive, and that he is unable to comply with the purging condition because he no longer has control of the funds. Chief United States Magistrate Judge Richard A. Powers, III filed a Report and Recommendation on November 1, 1996 recommending that the petition be dismissed for failure to exhaust state court remedies. The petitioner filed objections to the Report and Recommendation. After an independent review, the

Honorable Norma L. Shapiro dismissed the petition without prejudice for failure to exhaust state court remedies by order dated January 16, 1997. The Petitioner filed a Petition for Reconsideration, which was denied by Judge Shapiro on May 23, 1997. In her opinion, Judge Shapiro wrote:

> 9. The Superior Court in denying Mr. Chadwick's Sixth Petition for Writ of Habeas Corpus invited the Pennsylvania Supreme Court to set a temporal benchmark for when incarceration for civil contempt becomes impermissibly punitive; petitioner has not yet exhausted all state avenues of relief as he has not yet filed a Petition for Allowance of Appeal from the Pennsylvania Superior Court's April 23, 1997 ruling.
>
> 10. Petitioner's sixth Petition for Habeas Corpus has not been reviewed by the Pennsylvania Supreme Court and the question of when civil contempt becomes impermissibly punitive is one which a federal court should abstain from considering before the state supreme court has had the opportunity. *See Younger v. Harris*, 401 U.S. 37 (1971); *Hoffman v. Pursue, Ltd.*, 420 U.S. 592 (1975).

Order, May 23, 1997, at 1-2.

On July 18, 1997 the petitioner filed another petition for federal habeas relief on the grounds that: 1. he was denied his right to a jury trial; 2. he was denied the presumption of innocence and other fundamental rights available to persons when serious penalties are imposed; 3. his imprisonment for an indefinite period of time violates his right to due process; 4. his imprisonment to force payment of money in a civil dispute violates his rights to

due process and equal protection of the law; 5. his imprisonment in the absence of a stated condition for his release is unlawful; 6. he was denied due process in that his appeals were quashed as interlocutory, and he received no notice of the October 31, 1994 hearing; 7. he was denied the ability to prepare for and funds to employ counsel to represent him in the proceedings challenging his imprisonment when the court ordered half of the funds realized from the sale of the marital residence to be paid to wife's counsel; and 8. the Pennsylvania Divorce Code does not authorize the augmentation of property.

The District Attorney of Delaware County was joined and filed a Response. Barbara Jean Crowder Chadwick, the petitioner's wife, filed a Motion to Intervene, which was granted, and a Motion to Dismiss the Petition, which I recommended be granted and the petition be dismissed due to the petitioner's failure to exhaust his state court remedies, as set forth in a Report and Recommendation. The petitioner filed a Motion for Bail, which was denied. He filed exceptions to the Report and Recommendation, which Judge Shapiro reviewed, and overruled the objections, dismissing the petition for failure to exhaust state court remedies. Judge Shapiro stated that as long as there was an opportunity for the state court to address the issue of when detention for civil contempt becomes punitive, the petitioner had not exhausted his state court remedies. Judge Shapiro wrote:

> Although Mr. Chadwick has forfeited his right to seek Supreme Court review of the Superior Court's April 23, 1997 denial of his sixth state habeas petition, see Pa.R.App.P. 1113(a) (petition for allowance of appeal must be filed within 30 days of order), he would not be barred from

> filing a seventh state habeas petition based on his present confinement of approximately thirty-seven months. Under Pennsylvania law, Mr. Chadwick can file a seventh state habeas petition in the court of common Pleas and exhaust his appellate remedies. see 42 Pa.Cons.Stat.An. §931, or petition directly in the Supreme court, which has original jurisdiction over habeas corpus proceedings. See 42 Pa.Cons.Stat.An. §721(1). But unless the issues presented in the federal habeas petition have all been first presented to the Supreme Court, the district court may not exercise jurisdiction. See *Lambert*, 134 F.3d at 515 (requiring "complete exhaustion"); *Swanger*, 750 F.2d at 295 (raising claim before Supreme Court in petition for allowance of appeal satisfies exhaustion requirement).

Because the petitioner had not sought review in the Pennsylvania Supreme Court on this issue, his petition was dismissed without prejudice.

Although he had previously been represented by counsel, in September 1999 the petitioner filed a *pro se* Application for Leave to File Original Process (his seventh state habeas action) with the Pennsylvania Supreme Court. Wife sought permission to intervene, and opposed the application and the state habeas petition. In a per curiam order dated February 8, 2000 the Supreme Court granted the request to file original process and the request to file an answer, and denied the petition for habeas corpus.

In the meantime, the petitioner filed a counseled petition for release in the Delaware County Court of Common Pleas, alleging that he was suffering from "major psychological depression" causing him to be unable to

participate in his divorce litigation. The Honorable Joseph Battle held a full hearing, which included testimony of several witnesses and two forensic psychiatrists. In an opinion and order dated September 22, 1999, Judge Battle stated that he was "convinced that Mr. Chadwick is feigning mental illness in an effort to be released from prison without returning the $2,500,000 which he transferred out of this country". The petitioner did not appeal Judge Battle's decision.

On March 2, 2000 the petitioner filed the instant petition for federal habeas relief on the grounds that:

1. His imprisonment for civil contempt is impermissibly punitive;

2. He was denied due process by imprisonment for noncompliance with an order with which he was unable to comply;

3. He was denied due process because he was denied a right to a jury trial and other procedural rights;

4. He was denied due process by the summary nature of the proceedings which adjudicated his imprisonment;

5. He was denied due process by imprisonment where the imprisonment has become punitive;

6. He was denied due process by imprisonment for failure to pay money;

7. He was denied due process by imprisonment indefinitely in a civil action;

8. He was denied due process since the order of imprisonment is unlawful on its face;

9. He was denied due process by imprisonment for alleged violations on an order which the court lacked jurisdiction to issue; and

10. He was denied due process by the denial of a prompt appeal.

DISCUSSION

Before a Federal Court may consider the merits of a state prisoner's petition for writ of habeas corpus, the petitioner must exhaust all state remedies available to him as to each claim upon which relief is sought, 28 U.S.C. § 2254(c). See also *Picard v. Connor*, 404 U.S. 270, 275 (1971); *Brown v. Cuyler*, 669 F.2d 155, 157 (3d Cir. 1982); 28 U.S.C. 2254(c). The policy behind the total exhaustion doctrine is rooted in our tradition of comity: the state must be given the "initial opportunity to pass upon and correct" alleged violations of petitioner's constitutional rights. *Picard v. Connor, supra*, at 275, citing *Wilwording v. Swenson*, 404 U.S. 249, 250 (1971).

Each constitutional claim sought in petitioner's habeas petition must be exhausted. *Tillett v. Freeman*, 868 F.2d 106 (3d Cir. 1989); see 28 U.S.C. 2254(c). Exhaustion of state remedies ordinarily requires petitioner to have fairly presented his constitutional claims to the highest state court. *Chaussard v. Fulcomer*, 816 F.2d 925, 928 (3d Cir. 1987) (Fair presentment requires that before a particular claim may be asserted in federal court, the same method of analysis must have been made available to the state court.) *Castile v. Peoples*, 489 U.S. 346 (1989); *Swanger v. Zimmerman*, 750 F. 2d 291 (3d Cir. 1984). Although exhaustion does not require that the highest state court rule on the merits of petitioner's claims, it does

require that the court be given the opportunity to review them. *Bond v. Fulcomer*, 864 F.2d 306 (3d Cir. 1989). A petitioner "shall not be deemed to have exhausted the remedies available . . . if he has the right under the law of the state to raise, by any available procedure, the question presented." 28 U.S.C. 2254(c). The petitioner has the burden of proving all facts entitling him to a discharge as well as demonstrating that he has met all procedural requisites entitling him to relief. *Lambert v. Blackwell*, 134 F.3d 506 (3d Cir. 1998); *Brown v. Cuyler*, 669 F.2d 155, 158 (3d Cir. 1982).

The respondent and intervenor argue that this petition should be dismissed for failure to exhaust state court remedies under 28 U.S.C. §2254(c) and *Castile*, which require "fair presentation" of all issues to the state court prior to seeking federal habeas review. They argue that by filing a *pro se* state habeas petition directly with the Pennsylvania Supreme court without the record of the previous state court actions, the petitioner denied the state court a fair opportunity to evaluate the issues presented, especially a determination of when incarceration under a civil contempt order becomes punitive. It is unclear from the record why, although several of the petitioner's previous habeas petitions were counseled, the last one filed directly with the state Supreme Court was *pro se*, especially in light of the Superior Court requested [sic] that the Supreme Court review the petitioner's due process argument regarding the length of his incarceration.

The petitioner argues that in her April 30, 1998 Order, Judge Shapiro wrote:

> Although Mr. Chadwick has forfeited his right to seek Supreme Court review of the Superior Court's April 23, 1997 denial of his sixth state habeas petition, see Pa.R.App.P. 1113(a) (petition for allowance of appeal must be filed within 30 days of order), he would not be barred from filing a seventh state habeas petition based on his present confinement of approximately thirty-seven months. Under Pennsylvania law, Mr. Chadwick can file a seventh state habeas petition in the Court of common Pleas and exhaust his appellate remedies, see 42 Pa.Cons.Stat.Ann. §931, or petition directly in the Supreme court, which has original, but not exclusive, jurisdiction over habeas corpus proceedings, see 42 Pa.Cons.Stat.Ann §721(1). But unless the issues have all been first presented to the Supreme Court, the district court may not exercise jurisdiction. See *Lambert*, 134 F.3d at 515 (requiring "complete exhaustion:); *Swanger*, 750 F.2d at 295 (raising claim before Supreme Court in petition for allowance of appeal satisfies exhaustion requirement). (emphasis added).

1998 WL 218026, at 5.

As the petitioner points out, in stating that the [sic] he may file a state habeas petition directly in the state Supreme Court, Judge Shapiro has created the "law of the case" for this petitioner. *Arizona v. California*, 460 U.S. 605 (1983); *Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800 (1988). Although it is dubious whether the petitioner's *pro se* petition filed with the state Supreme Court under its power of original jurisdiction complies with the requirement of fair presentation of the issues to the state court, it is the law of this case, and thus the petitioner must be considered to have exhausted his state

court remedies. Accordingly, this petition shall be considered on its merits.

This case must be decided pursuant to the terms of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), Pub.L. 103-132, 110 Stat. 1214 (enacted April 24, 1996). Section 104(2) of the AEDPA amended 28 U.S.C § 2254, the statute under which this petition was filed, requires the federal courts to give greater deference to a state court's legal determinations.

Section 2254(e) provides that a state court's factual findings "shall be presumed to be correct" and further provides that a habeas petitioner "shall have the burden of rebutting the presumption of correctness by clear and convincing evidence". *Berryman v. Morton*, 100 F.3d 1089 (3d Cir. 1996). Section 2254(d), as amended by the AEDPA, requires a petitioner seeking federal habeas relief to "show that the state court's decision was contrary to clearly established case law by the [United States] Supreme Court, or alternatively, that the state court's decision was an unreasonable application of Supreme Court case law." *Dickerson v. Vaughn*, 90 F.3d 87, 90 (3d Cir. 1996). These standards apply to questions of law or mixed questions of law and fact. *See also Drinkard v. Johnson*, 97 F.3d 751 (5th Cir. 1996); *Lindh v. Murphy*, 96 F.3d 856 (7th Cir. 1996), *rev'd on other grounds*, 117 S.Ct. 2059 (1997).

The Third Circuit held in *Matteo v. Superintendent, SCI Albion*, 171 F.3d 877 (3d Cir. 1999) (*en banc*) that § 2254(d) requires a two-step analysis:

> First, the federal habeas court must determine whether the state court decision was "contrary to" Supreme Court precedent that governs the

> petitioner's claim. Relief is appropriate only if the petitioner shows that "Supreme Court precedent requires an outcome contrary to that reached by the relevant state court." *O'Brien*, 145 F.3d at 24-25. In the absence of such a showing, the federal habeas court must ask whether the state court decision represents an "unreasonable application of" Supreme court precedent: That is, whether the state court decision, evaluated objectively and on the merits, resulted in an outcome that cannot reasonably be justified.

Matteo, 171 F.3d at 891.

To meet the *Matteo* "contrary to" test, the petitioner must not merely show that his interpretation of Supreme Court precedent is more plausible than that of the state court, nor that there is a simple disagreement with a reasonable state court interpretation of applicable precedent. In order for a petitioner to obtain federal habeas relief he "must demonstrate that the Supreme Court precedent requires the contrary outcome." *Id.* (emphasis in original).

The "unreasonable application" standard, does not allow a federal habeas court to grant a writ just because it disagrees with the state court decision, or because it would have reached a different result. "The appropriate question is whether the state court's application of Supreme Court precedent was objectively unreasonable. The federal habeas court should not grant the petition unless the state court decision, evaluated objectively and on the merits, resulted in an outcome that cannot be justified under existing Supreme Court precedent." *Matteo*, at 889-90. The Third Circuit went on to state that although habeas courts are not precluded from considering the decisions of lower

federal courts when determining whether the state court's application of Supreme Court precedent was reasonable, "federal courts may not grant habeas corpus relief based on the state court's failure to adhere to the precedent of a lower federal court on an issue that the United States Supreme Court has not addressed." *Id.*

More recently, the United States Supreme Court held in *Williams v. Taylor*, 120 S.Ct. 1479 (April 18, 2000) that in order for a petitioner to prevail in a federal habeas action, he must satisfy either the "contrary to" clause or the "unreasonable application clause" of 2254(d)(1). In order to satisfy the "contrary to Clause" the petitioner must prove that the state court arrived at a conclusion opposite to that reached by the Supreme Court on a question of law, or if the state court decided a case differently from the decision of the Supreme Court on materially indistinguishable facts. Under the "unreasonable application clause" a federal habeas court may not issue the writ simply because, in its independent judgment, the state court applied clearly established law erroneously or incorrectly.

In support of his claims that his due process rights were violated, the petitioner relies heavily on *International Union, United Mine Workers of America v. Bagwell*, 512 U.S. 821, 114 S.Ct. 2552 (1994), hereinafter referred to as "*Bagwell*". He claims that "under *Bagwell*, so far as the process which is due is concerned, the analysis no longer focuses on whether the [contempt] proceeding is civil or criminal, but on the *seriousness* of the penalty. Where the penalty is serious, (1) a jury trial must be afforded, and (2) the burden of proof is the criminal standard." Petitioner's Opening Memorandum at 5. He argues that under *Bagwell* he was entitled to a jury trial, the

presumption of innocence, proof beyond a reasonable doubt, the burden of which was on the opposition. He also alleges that under *Bagwell* his continued imprisonment is impermissibly punitive and not coercive, because the length of the imprisonment has transformed the purpose of the sanction from coercion to punishment.

As *Bagwell* is one of the lynchpins in the petitioner's case, a careful examination of that case is warranted. The petitioners in *Bagwell* were the International Union, United Mine Workers of America and United Mine Workers of America District 28 (hereinafter the union), who were engaged in a protracted labor dispute with the Clinchfield Coal Company and Sea "B" Mining (hereinafter the companies) in Virginia. An injunction was issued, which prohibited the union and its members from obstructing ingress and egress to company facilities, throwing objects at and physically threatening company employees, placing tire-damaging "jackrocks" on the road used by company vehicles, and picketing with more than a specified number of people at designated sites. The court instructed the union to place supervisors at all sites, and report any violations to the court.

The trial court held a contempt hearing and determined that the union had committed seventy-two violations of the injunction, for which the union was fined $642,000. The court stated that the union would be fined $100,000 for any future violent violations, and $20,000 for future non-violent violations. Seven subsequent civil contempt hearings were held, resulting in findings of more than four hundred separate violations of the injunction, many of them violent. The court levied a fine against the union in the amount of more than sixty-four million

dollars approximately twelve million to be paid to the companies, and the remainder to the commonwealth. The union appealed.

While that appeal was pending, the underlying labor dispute was resolved, and the parties agreed to vacate the contempt fines and dismiss the case. The court vacated its order for the twelve million dollar fine to the companies. However, believing that the fifty-two million dollars owed to the commonwealth was a coercive civil fine, the court refused to vacate that fine, which it concluded were payable to the public. The union appealed.

The Court of Appeals of Virginia reversed, and ordered the contempt fines be vacated pursuant to the settlement agreement, on the reasoning that "civil contempt fines imposed during or as a part of a civil proceeding between private parties are settled when the underlying litigation is settled by the parties and the court is without discretion to refuse to vacate such fines." *Mine Workers v. Clinchfield Coal Co.*, 12 Va.App. 123, 133, 402 S.E.2d 899, 905 (1991).

The Supreme Court of Virginia reversed, holding that public policy disfavored parties settling coercive civil fines. The court also rejected the union's contention that the fines were criminal and could not be imposed without a criminal trial, finding that the fines were intended to coerce compliance with the terms of the injunction, and the union could have avoided the fines by obeying those terms. The United States Supreme Court granted *certiorari*.

The Supreme Court reversed the decision of the Virginia Supreme Court, finding that the fines imposed were criminal in nature, and thus the union was entitled

to the safeguards commensurate with other criminal proceedings. In making that determination, the Court found that the fines were punitive in the criminal sense, rather than coercive or compensatory in the civil sense. By way of example, the Court found that certain indirect contempts involving out-of-court disobedience to complex injunctions often require intensive factfinding. Under those circumstances criminal procedural protections such as the right to counsel and proof beyond a reasonable doubt are necessary to protect the due process rights of the parties, and prevent the arbitrary exercise of judicial power. The Court noted the possibility of denial of due process when the offended judge had the unlimited power to identify, prosecute, adjudicate and sanction the contemnor.

The Court also set forth criteria for the determination of true civil contempt. It reaffirmed the holding in *Gompers v. Bucks Stove & Range Co.*, 221 U.S. 418, 31 S.Ct. 492 (1911), which defined a civil contempt sanction if it is "remedial, and for the benefit of the complainant." *Id.* at 441. The Court stated "The paradigmatic coercive, civil contempt sanction, as set forth in *Gompers*, involves confining a contemnor until he complies with an affirmative command such as an order 'to pay alimony, or to surrender property ordered to be turned over to a receiver, or to make a conveyance'". *Bagwell*, at 828. When "the contemnor is able to purge the contempt and obtain his release by committing an affirmative act, and thus 'carries the keys of his prison in his own pocket.'" *Gompers*, at 442, quoted in *Bagwell*, at 828. Thus if the contemnor is afforded the ability to purge his contempt, the contempt is civil, and not subject to the same requirements of due process as a criminal proceeding. The Court went on to

state, "Because civil contempt sanctions are viewed as nonpunitive and avoidable, fewer procedural protections for such sanctions have been required. To the extent that such contempts take on a punitive character, however, and are not justified by other considerations central to the contempt power, criminal procedural protections may be in order." *Id.* at 831. "Indirect contempts involving discrete, readily ascertainable acts, such as turning over a key or payment of a judgment, properly may be adjudicated through civil proceedings since the need for extensive, impartial factfinding is less pressing." *Id.* at 833. The Court also noted that if the fine is compensatory rather than punitive, the contempt is civil. Thus, even after *Bagwell*, the Court recognizes the concepts of both civil and criminal contempt.

In the instant case, the petitioner argues that the *Bagwell* Court abandoned the concept of civil contempt where due process is concerned, and focused on the concept of the seriousness of the penalty. He claims that where the penalty is serious, a jury trial must be afforded and the burden of proof is the criminal standard. He alleges that a sixty-month sentence is sufficiently serious to warrant criminal due process protection. This is not the case. Firstly, *Bagwell* is easily distinguishable from this case in that it involved a *fine imposed by the court.* Here the petitioner was ordered to remit marital funds to the court, or serve an indefinite term of imprisonment until he complied with the court's order. There was no fine imposed. Secondly, the petitioner could have purged himself of his contempt at any time by complying with the court's order. The fact that the petitioner has now served sixty-seven months in the Delaware County Prison is no fault of anyone but the petitioner himself. Thirdly, the payment

was not punitive, but compensatory. The court ordered that marital funds subject to equitable distribution in a divorce action should be deposited with the court to assure that the intervenor/wife would have access to them. It must be noted that the court only took this action after: 1) petitioner/husband caused the funds to be sent outside the country under false pretenses and then returned for his sole benefit; and 2) multiple hearings on the existence of those funds. At those hearings the petitioner claimed, as he does here, that the funds do not exist; however, the intervenor produced evidence of the existence and location of those funds. The petitioner produced no evidence that countered that presented by the wife. Therefore, the compensatory component discussed in *Bagwell* is present here. The petitioner's arguments that his imprisonment for civil contempt is impermissibly punitive, and that he was entitled to a jury trial and other remedies under *Bagwell* are without merit.

The petitioner next claims that his due process rights were violated because he is unable to comply with the court order. As noted above under the AEDPA and applicable case law, great deference is given the findings of the state court regarding the facts of a case. In this case, the petitioner had numerous hearings, where evidence was presented regarding the existence and location of the $2.5 million in question. The petitioner produced no evidence to counter that presented by the intervenor, and the trial court found her evidence to be credible. Since the original hearings, the petitioner has been no stranger to the state court system, but has provided no evidence to support his contention that he cannot comply with the order, except for his own unsubstantiated statements. Additionally, he has produced no evidence before this Court to support his

claim that he is unable to comply with the order. In the absence of compelling evidence to the contrary, this Court is bound by the factual conclusions of the state court. Thus, this claim is without merit.

The petitioner next argues that he was denied due process by reason of indefinite unlimited civil contempt, which has caused his imprisonment for more than five years. As noted above, the petitioner has always had "the keys to his prison in his own pocket". The petitioner argues that the court denied his right to due process by subjecting him to non-criminal confinement; however, the court did not determine the length of the petitioner's incarceration. Under the court order, the petitioner could have served no time in prison, or been released within days. Again, it is not the court which has caused the petitioner to be incarcerated for such a long period of time, but rather his own refusal to comply with the court order. The petitioner cites *Foucha v. Louisiana*, 504 U.S. 71 (1992), which involves incarceration of a mentally ill individual; *Kansas v. Hendricks*, 117 S.Ct. 2072 (1997), which involves civil confinement of a sexual predator; and *United States v. Salerno*, 481 U.S. 739 (1987), which relates to the pre-trial detention under the Bail Reform Act. None of these cases are relevant here.

If the petitioner's position were adopted by this Court, any contemnor could merely be stubborn and wait for sufficient time to pass, thus avoiding compliance with legitimate court orders with impunity. This is not an acceptable result. Court orders are the only management tool the court has for the efficient and effective administration of justice. Litigants cannot be allowed to decide which contempt orders should be obeyed, and which should be ignored and invalidated merely by the passing of

time. For this petitioner to argue that he is being denied due process by remaining in prison for more than five years when he could purge himself of the contempt at any time is incomprehensible, and without merit. The state court determined that the petitioner's wife proved that she had a right to equitable distribution of the funds in question, and that those funds would more than likely disappear without court intervention. The state court concluded that the only way to protect the rights of the intervenor was for the court to assume control over the marital funds until an appropriate distribution could be made under the Divorce Act. In making that determination, the court acknowledged that the rights of the intervenor were in need of protection. Now, the petitioner argues that his rights are being violated because of his refusal to comply with the court's order. However, it is not up to the petitioner to decide that his rights are superior to those of his wife; that determination is the court's to make, and after repeated hearings over the past five years, the state court has made that decision. As noted above, the petitioner has presented no evidence to the contrary, therefore, this claim must be denied.

The petitioner next argues that he was denied due process because the proceedings which resulted in the contempt lacked the attributes of a full trial. After a hearing the petitioner was ordered to return the $2.5 million on July 22, 1994. He failed to do so, and after a hearing on October 31, 1994 he was found in contempt of the July 22, 1994 order, and on November 2, 1994 an order to that effect was entered. As noted above in the procedural history, the petitioner had continuous access to the court. In *Bagwell*, the Supreme Court held that in cases of civil contempt, the contemnor was not entitled to a full

trial. The petitioner was given notice of all hearings, and thus his due process rights were not abridged.

The petitioner next argues that he was denied due process because he is imprisoned for the purpose of compelling the payment of money. This claim has no merit. The cases cited by the petitioner involve incarceration of individuals as a collection tool in order to extract payments of judgments. There is no debt here. The court is not attempting to deprive the petitioner of money, but merely to assure that it is available to be equitably divided under the terms of the Pennsylvania Divorce Code. By his past conduct the petitioner made it clear to the state court, and this Court as well, that without the protection of the state court, there would be no assets available to be divided for the benefit of the intervenor. As this is not incarceration for the purpose of collecting money, the petitioner's claim is without merit.

The petitioner next argues that he was denied due process because the order under which he is incarcerated provides no condition upon which his imprisonment will terminate. The petitioner alleges that under the terms of the contempt order directed that the petitioner be imprisoned "until a further hearing is held". While this is true, the petitioner has had several hearings since that order was entered. The order states, *inter alia*, that the petitioner must deposit $2.5 million with the court and surrender his passport. It is clear from all of the many prior proceedings in this case that once the petitioner complies with the terms of the order, such as depositing the funds with the court and surrendering his passport, he will purge himself of the contempt.

At his last state court hearing he alleged that he was suffering from major psychological depression causing him to be unable to participate fully in his divorce litigation. After a full hearing with several witnesses, including two forensic psychiatrists, the court concluded that the petitioner was feigning mental illness in an effort to be released from prison without complying with the order regarding the return of the $2.5 million. Again, the court determined that the plaintiff had the ability but not the desire to comply with the court order. In fact, the petitioner has refused, and continues to refuse to comply with any of the terms of the July 22, 1994 order. Accordingly, this claim is also without merit.

The petitioner's ninth claim for relief is the allegation that he was denied due process in that his imprisonment arises from the alleged non-compliance with an order which the state court lacked jurisdiction to enter. He claims that the court entered the order pursuant to the general equity powers set forth in §3323(f) of the Divorce Code, which he claims allows injunctions to prevent the transfer of marital property, and authorizes constructive trusts upon marital property improperly transferred to third parties, but does not permit the augmentation of marital property prior to an equitable distribution hearing.

The petitioner raised this issue repeatedly in the state court, and each time the state court found the order to be within the parameters of the statute. The United States Supreme Court held in *Estelle v. McGuire*, 502 U.S. 62 (1991) that federal habeas relief does not lie for errors of state law. "[I]t is not the province of a federal habeas court to reexamine state-court determinations on state-law questions. In conducting habeas review, a federal court is

limited to deciding whether a state conviction violated the Constitution, laws, or treaties of the United States." *Estelle*, at 67-68. *See also Pulley v. Harris*, 104 U.S. 37, 104 S.Ct. 871 (1984); *Lewis v. Jeffers*, 497 U.S. 764, 110 S.Ct. 3092 (1990); *Engle v. Isaac*, 456 U.S. 107 (1982). As the Divorce Code is a creature of state law, it is not within the purview of a federal habeas court to second-guess or revisit a state court's action regarding a determination of state law. Thus, this claim must be dismissed.

The tenth and final ground on which the petitioner seeks federal habeas relief is the allegation that the intervenor misstated the record to advance the punitive incarceration of her husband. He claims that the intervenor's motion to dismiss for failure to exhaust state court remedies misstates the record in that the intervenor participated in the last state habeas action filed in 1999 with the Pennsylvania Supreme Court. As noted above, I am bound to conclude that this petitioner has exhausted his state court remedies based on Judge Shapiro's order of April 30, 1998. Therefore, the intervenor's motion to dismiss on the grounds of failure to exhaust state court remedies should be denied.

The District Attorney of Delaware County has filed a motion to be removed from the caption of this case, and deleted as a respondent. He bases his request on the fact that, unlike most habeas petitions brought under §2254, this petitioner was never convicted of a crime, and thus the District Attorney has no connection with the case. As the wife has been permitted to intervene in these proceedings, thus providing her an opportunity to protect her interests, and does not object to the respondent's request, there is no need for the District Attorney to participate in

this litigation. Thus, the District Attorney's motion to withdraw should be granted.

Based on the foregoing, this petition should be denied and dismissed on its merits. Accordingly, I make the following:

RECOMMENDATION

AND NOW, this 8 day of December, 2000, IT IS RESPECTFULLY RECOMMENDED, that the Petition for Writ of Habeas Corpus, pursuant to 28 U.S.C. § 2254, be DENIED AND DISMISSED, and the District Attorney's motion to be removed as a respondent be GRANTED. There is no probable cause to issue a certificate of appealability.

BY THE COURT:

/s/ Arnold C. Rapoport
ARNOLD C. RAPOPORT
UNITED STATES
MAGISTRATE JUDGE

ENTERED: 12/11/00

CLERK OF COURT

Supreme Court, U.S.
FILED
APR 14 2003
OFFICE OF THE CLERK

No. 02-1346

IN THE SUPREME COURT OF THE UNITED STATES

H. BEATTY CHADWICK,
PETITIONER

v.

BARBARA JEAN CROWTHER CHADWICK

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

BRIEF OF *A MATTER OF JUSTICE EDUCATIONAL FOUNDATION* AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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A. INTERESTS OF *AMICUS CURIAE*.

A Matter of Justice Educational Foundation ("AMOJEF") is the registered nonprofit arm[1] of *A Matter of Justice* ("AMOJ"), a national coalition of grassroots organizations and thousands of otherwise unaffiliated individuals united by the common goal of improving the administration of justice in the United States. Consistent with

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[1] AMOJEF is registered with the Internal Revenue Service pursuant to Sec. 501(c)(3) of the Internal Revenue Code.

this goal, AMOJ also offers assistance in specific instances in which justice has been demonstrably denied, particularly those with broader implications for the Constitutional rights of the citizenry. AMOJ believes that justice continues to be denied to H. Beatty Chadwick, Petitioner, after his imprisonment of more than eight years and that his imprisonment has profound implications for a society that professes to adhere to the rule of law and to accepted norms of human and civil rights.[2]

Furthermore, while AMOJEF cannot provide authoritative statistics at this time, its leadership believes, based on anecdotal evidence, that there is a growing reliance by State courts on civil contempt sanctions without affording accused contemnors the opportunity for jury trials or the due process protections that should accompany the imposition of serious deprivations of liberty.

Through counsel Respondent, Barbara Jean Crowther Chadwick, has consented to the filing of this *amicus* brief, as has the Petitioner. Their written consents are included herein as Exhibits A and B.

B. STATEMENT OF THE CASE.

Petitioner, H. Beatty Chadwick, was adjudged in civil contempt of a July 22, 1994, order by the Court of Common Pleas of Delaware County, PA, upon a finding, by the court, that he had fraudulently prevented that court from acquiring jurisdiction for equitable distribution of some $2.5 million in

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[2] Pursuant to Supreme Court Rule 37.6. *Amicus* states that no counsel for any party herein prepared any part of the instant paper, nor is any monetary transaction related to preparation of the instant paper subject to the reporting required by Rule 37.6.

marital assets and then had refused to deposit such an amount with the court. Petitioner was arrested and imprisoned on April 5, 1995, and has remained imprisoned. Unable (or unwilling) to post a bail of $3 million, he now has been imprisoned for more than eight years.

Adduced from the original trial proceedings, an appeal to the Pennsylvania Superior Court, an original proceeding before the Pennsylvania Supreme Court, and proceedings on seven petitions for *habeas corpus* relief, the record is devoid of any objective evidence suggesting that Petitioner has ever been any more able or willing than on July 22, 1994, to comply with the order that he deposit $2.5 million with the court. Thus, if the present impasse continues, Petitioner will live out the remainder of his life in the Delaware County jail.

C. SUMMARY OF ARGUMENT.

Amicus argues first that the Eighth Amendment entitles Petitioner to immediate release from a "civil" imprisonment of eight years, and continuing, that has become punitive as well as substantially excessive in relation to his wrongful refusal, according to various judges sitting as fact-finders, to produce $2.5 million for equitable distribution in State divorce proceedings. *Amicus* urges further that Mr. Chadwick's continued and excessively lengthy imprisonment also violates his due process rights, particularly the right to a trial by jury, in that the potential for "serious" (*i.e.*, lengthy) confinement was apparent at the time of the State trial court's finding Mr. Chadwick in "civil" contempt. Obviously the seriousness of Mr. Chadwick's confinement has been increasingly evident.

D. ARGUMENT.

D.1. The Eighth Amendment bars Petitioner's continued imprisonment.

Amicus is aware of no other contempt sanction in our nation's judicial annals, with the possible exception of those involving physical safety of others, that rivals the eight-plus years of imprisonment that Petitioner has endured. Such a draconian sanction is grossly disproportionate to the nature and gravity of Petitioner's alleged offense. Accordingly, Petitioner should be released forthwith.

To establish that Eighth Amendment protections are available for relief from his present imprisonment, Petitioner must show first that the sanction that he has actually incurred is punitive. A highly relevant consideration in making that showing is that the sanction appears excessive in relation to its avowed *nonpunitive* purpose. *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 169 (1963).

Clearly, if imprisonment would coerce compliance with its order as presumably intended by the State trial court, a confinement of far less than eight years would have sufficed – or six years and nine months, as of the time of the federal district court's grant of *habeas* relief.[3] And if a lesser period

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[3] It seems clear that each court that denied *habeas* relief must have been aware at the time it did so that Mr. Chadwick would serve many more months or even years as a result of such denial. Thus the full impact of each denial is not captured when the denial is considered simply as rejecting such relief as of the time when the petition was filed or when the decision was issued.

of confinement could reasonably have been expected to be productive, then the present length of incarceration – eight years – must be deemed excessive in light of its avowed nonpunitive purpose. Similarly, in light of the length of *unproductive* incarceration that has already transpired, there is no reliable means to calculate what additional length of imprisonment – *if any* – would be likely to succeed in coercing the desired compliance. Thus, the sheer excessiveness of Mr. Chadwick's imprisonment is likely to be exacerbated.

These circumstances leave a proponent of Mr. Chadwick's continued incarceration without the means to meet *any* evidentiary burden: Given the time that Mr. Chadwick has already served and assuming *arguendo* that he has the means to comply with the subject order of the State trial court, there simply is no way to predict either *whether* or *when* he would comply, and thus no way for the proponent of his sanction to meet even a preponderance standard.

The federal district court concluded:

> For eighty months, Chadwick has refused to comply with a valid state court order to deposit $2,500,000.00 in marital assets with the court; *this renders unreasonable the belief that continued incarceration will have a coercive effect.* Chadwick has the present ability to comply, *but the duration of his imprisonment has crossed the line from coercive to punitive, and requires his release.* [Emphasis supplied.]

The third Circuit's reversal of the district court holds, woodenly, that the confinement imposed upon Mr. Chadwick is coercive, because it found, as every other court that had reached the question, that he had the means to comply. The

meaning of this holding is clear: so long as it is found that Mr. Chadwick has the means to comply, his imprisonment is coercive, and it may continual "indefinitely". Third Circuit slip opinion at 24-25, quoting from *United Mine Workers v. Bagwell*, 512 U.S. 821, 828 (1994).

Therefore, by the third circuit's reasoning, the imprisonment challenged here could continue literally for the rest of Mr. Chadwick's lifetime, and could so continue regardless of the likelihood of compliance. Or, put another way, the Third Circuit has said that no civil contempt sanction can be excessive as long as the contemnor has the ability to comply but hasn't done so.

Thus the Third Circuit's holding frames with exquisite clarity the question that *Amicus* urges this court to answer: Does the Eighth Amendment afford protection against a civil contempt sanction that, as this court found in *Kennedy*, *supra*, consists of imprisonment potentially for life? Is not such a sanction *excessive* in relation to its avowed nonpunitive purpose – indeed, in relation to *any* nonpunitive purpose? "Civil" imprisonment for life is excessive by any measure, and every measure, and certainly it is excessive when measured against the nonpunitive purpose of compelling the payment or production of money.

Another formulation leading, circuituously, to the same conclusion: If a serious sanction is ineffective to accomplish its avowed nonpunitive purpose, then it is punitive. U.S. *v. Bajakajian*, 524 U.S. 321, 329 (1998) ("civil" forfeiture of currency following conviction for exporting currency without reporting did not serve a remedial purpose and was punitive for the purpose of applying the double jeopardy clause).

Once it is shown that the challenged sanction is in

fact punitive, then a showing that the sanction is grossly disproportionate to the wrong committed would entitle the sanctioned party to Eighth Amendment relief. *Solem v. Helm*, 263 U.S. 277, 290 (1983) (sentence of life imprisonment without parole for issuing a $100 bad check, after six prior felony convictions, found grossly disproportionate); *Harmelin v. Michigan*, 501 U.S. 957 (1991) (controlloing concurrence by Justice Kennedy) (preserving, as *stare decisis*, *Solem*'s "grossly disproportionate" standard for proportionality analysis while qualifying need for further, "Intra- and inter-jurisdictional analyses").

Furthermore, whether the sanctioning proceeding is labeled "civil" or "criminal" is not dispositive of the applicability of the Eighth Amendment. *Austin v. U.S.*, 509 U.S. 602, 608 (1993). ("Civil" in rem forfeiture is subject to Eighth Amendment); *Bajakajian, supra.*

Rather than rely on the label attached to a particular proceeding, courts seeking to discern the true nature of a proceeding should engage in a "particularized assessment of the *penalty imposed* and the purposes that the penalty may fairly be said to serve." "A civil sanction that cannot fairly be said *solely* to serve a remedial purpose, but rather can only be explained as also serving either retributive or deterrent purposes, is *punishment*, as we have come to understand the term." [Emphasis added.] *U.S. v. Halper*, 490 U.S. 433, 448 (1989) (action for civil penalty following criminal conviction based on the same conduct violates the double jeopardy clause).

When punitive sanctions are reviewed for Eighth Amendment purposes, *Harmelin* teaches that, after deference to the legislatures, courts should first make a "threshold comparison of the crime committed and the sentence

imposed" to determine whether that comparison "leads to an inference of gross disproportionality". If so, then there should be a "comparative analysis of sentences . . . to validate an initial judgment that a sentence is grossly disproportionate to a crime." *Id.* [The foregoing passage is found at Paragraph 126 of the report of *Harmelin* found at 1991.SCT.43664 <http://www.versuslaw.com>.] The comparative analysis referred to is consideration of the following objective factors: (1) sanctions imposed on others sanctioned in the same jurisdiction; (2) the sanctions imposed for the same offense in other jurisdictions. *Solem*, 463 U.S. at 290-291, but with the foregoing factors numbered as (2) and (3).

Here, in order to assess the gravity of the wrong that Petitioner was ordered to rectify, it is helpful to recognize that Petitioner's wrong was essentially private and economic. Significant also is the lack of any attempt, during the nearly nine years since he was found in contempt, to prosecute Petitioner criminally for this asserted wrong.

In considering the sanction imposed and incurred by Petitioner *vis-a-vis* sanctions imposed on others in the same jurisdiction, it is significant that if Petitioner had been found to have violated a *final* divorce decree, rather than an *interim* order issued to allow the court to make determinations that would have been included in a final divorce decree, the maximum sanction would have been six months' imprisonment. 23 PA C.S. § 3502(e)(6).[4] Or if Petitioner had

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[4] Section 3502(e)(6) of Title 23, Pennsylvania Consolidated Statutes, provides as follows:

> **(e) Powers of the court.** – If, at any time, a party has failed to comply with an order of equitable distribution, as provided for in this chapter or with the terms of an agreement as entered into between the parties, after hearing, the court may, in addition to

been sanctioned for an *indirect* criminal contempt, the maximum sentence would have been 15 days. 42 PA C.S. § 4132, 4133.[5]

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any other remedy available under this part, in order to effect compliance with its order:

* * *

(6) issue attachment proceedings, directed to the sheriff or other proper officer of the county, directing that the person named as having failed to comply with the court order be brought before the court, at such time as the court may direct. If the court finds, after hearing, that the person willfully failed to comply with the court order, it may deem the person in civil contempt of course and, in its discretion, make an appropriate order, including, but not limited to, commitment of the person to the county jail for a period not to exceed six months.

[5] The above-cited statutes provide, in pertinent part, as follows:

§ 4132. Attachment and summary punishment for contempts.

The power of the several courts of this Commonwealth to issue attachments and to impose summary punishments for contempts of court shall be restricted to the following cases:

* * *

(2) Disobedience or neglect by officers, parties, jurors or witnesses of or to the lawful process of the court.

(3) The misbehavior of any person in the presence of the court, thereby obstructing the administration of justice.

§4133. Commitment or fine for contempt.

Except as otherwise provided by statute, the punishment or commitment for contempt provided in section 2132 (relating to attachment and summary punishment for contempts) shall extend only to contempts committed in open court. All other contempts shall be punished by fine only.

§4136. Rights of persons charged with certain indirect criminal contempts.

(a) General rule. – A person charged with indirect criminal contempt for violation of a restraining order or injunction issued

Finally, in weighing the sanctions imposed for civil

by a court shall enjoy:

(1) The rights to bail that are accorded to persons accused of crime.

(2) The right to be notified of the accusation and a reasonable time to make a defense, if the alleged contempt is not committed in the immediate view or presence of the court.

(3)(i) Upon demand, the right to a speedy and public trial by an impartial jury of the judicial district wherein the contempt is alleged to have been committed.

(ii) The requirement of subparagraph (i) shall not be construed to apply to contempts:

(A) Committed in the presence of the court or so near thereto as to interfere directly with the administration of justice, or to apply to the misbehavior, misconduct, or disobedience of any officer of the court in respect to the writs, orders, or process of the court:

(B) Subject to 23 Pa.C.S. § 6114 (relating to contempt for violation of order or agreement).

(C) Subject to Pa.C.S. §4108(c) (relating to nonjury criminal contempt proceedings).

(4) The right to file with the court a demand for the withdrawal of the judge sitting in the proceeding, if the alleged contempt arises from an attack upon the character or conduct of such judge, and if the attack occurred otherwise than in open court. Upon the filing of any such demand, the judge shall thereupon proceed no further but another judge shall be designated by the court. The demand shall be filed prior to the hearing in the contempt proceeding.

(b) Punishment. Except as otherwise provided in this t8itle or by statute hereafter enacted, punishment for a contempt specified in subsection (a) may be by fine not exceeding $100 or by imprisonment not exceeding 15 days in the jail of the county where the court is sitting, or both, in the discretion of the court. Where a person is committed to jail for the nonpayment of such a fine, he shall be discharged at the expiration of 15 days, but where he is also committed for an definite time, the 15 days shall be computed from the expiration of the definite time.

contempt in other jurisdictions, *Amicus* notes that Federal law limits, to 18 months, the duration of a contempt sanction for refusal to testify before a grand jury. 28 U.S.C. § 1826(a)(2)[6]. Furthermore, Subsection (c) of that same statute limits – to

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[6] Section 1826 provides, in its entirety, as follows:

Sec. 1826. Recalcitrant witnesses

(a) Whenever a witness in any proceeding before or ancillary to any court or grand jury of the United States refuses without just cause shown to comply with an order of the court to testify or provide other information, including any book, paper, document, record, recording or other material, the court, upon such refusal, or when such refusal is duly brought to its attention, may summarily order his confinement at a suitable place until such time as the witness is willing to give such testimony or provide such information. No period of such confinement shall exceed the life of -

(1) the court proceeding, or

(2) the term of the grand jury, including extensions, before which such refusal to comply with the court order occurred, ***but in no event shall such confinement exceed eighteen months.*** [Emphasis supplied.]

(b) No person confined pursuant to subsection (a) of this section shall be admitted to bail pending the determination of an appeal taken by him from the order for his confinement if it appears that the appeal is frivolous or taken for delay. Any appeal from an order of confinement under this section shall be disposed of as soon as practicable, but not later than thirty days from the filing of such appeal.

(c) Whoever escapes or attempts to escape from the custody of any facility or from any place in which or to which he is confined pursuant to this section or section 4243 of title 18, or whoever rescues or attempts to rescue or instigates, aids, or assists the escape or attempt to escape of such a person, shall be subject to imprisonment for not more than three years, or a fine of not more than $10,000, or both.

three years' imprisonment and a fine of up to $10,000 – the sentence for *escaping, aiding the escape, or attempting either to escape or aid the escape* of an individual to frustrate the confinement mandated by Subsection (a). Weighed against the enormity of wrongs that could be the subject of (unsuccessful) attempts to coerce testimony before a federal grand jury, and the substantially greater harm, both actual and potential, that could flow from violations of Subsec. (d) of Section 1826, the wrong found against Petitioner is decidedly modest.[7]

Furthermore, even where there is no legislative direction as to the length of confinement for particular conduct, courts do not have unbridled discretion, but must exercise this extraordinary power – to sanction contempts – "with the utmost sense of responsibility and circumspection". *Green v. U.S.*, 356 U.S. 165, 185 (1958) (upholding three-year sentence, imposed without benefit of jury trial, for contumacious failure to surrender documents).

In sum, *Amicus* submits that the Eighth Amendment's

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[7] It comes to mind, from accounts in the popular press, that at least one individual who confessed to multiple Mafioso "hits" testified before a federal grand jury concerning the late John Gotti. Had this individual refused to testify, he obviously could have deprived law enforcement of information concerning major criminal enterprises and thus caused (or contributed materially to) incalculably greater harm to public and governmental interests than the acts and omissions charged to Petitioner. Indeed, refusals to give grand jury testimony concerning criminal activities present a different dimension of wrongdoing and thus are simply not comparable to the wrongs dealt with here. Yet Petitioner has thus far served a period of imprisonment that is more than fivefold greater than the maximum period of imprisonment for a contumacious refusal to testify before a federal grand jury.

protection against grossly disproportionate punishments requires the release of Petitioner.

Amicus submits further that it is proper to raise the foregoing argument to seek Eighth Amendment relief in light of Petitioner's thorough discussion of his asserted due process rights in his Petition filed herein. *See*, Question 1 of the Petition and corresponding Argument.

D.2. In light of the"serious" and potentially continuing deprivation of Petitioner's liberty that became apparent within six months after the commencement of his imprisonment, Petitioner's Sixth Amendment right to a jury trial and his right to due process have been violated by his continued confinement.

Of particular significance, *Amicus* believes, was the trial court's failure to accord Petitioner the opportunity for a jury trial, which has been increasingly a matter of concern to this Court during the past 50 years. This concern resulted finally in *Bloom v. State of Illinois*, 391 U.S. 194, 196-97 (1968), in which this Court held that a lower court's imposition of a 24-month sentence for probating a spurious will had erred in failing to afford the accused contemnor a jury trial. The *Bloom* court stated that convictions for criminal contempt are indistinguishable from ordinary criminal convictions and that a "serious" criminal contempt sanction could not be imposed by the state absent such a trial.

Bloom left undisturbed this Court's civil contempt jurisprudence, which allowed imprisonment for *civil* contempt without the protection of a jury trial. *Shillitani v. United States*, 384 U.S. 364, 365 (1966). In the latter case, the contemnor was imprisoned until he agreed to testify before a

grand jury, but this court vacated the sentence, since the term of the grand jury had expired and it was impossible for the witness to fulfill the condition.

Then came *United Mine Workers v. Bagwell*, 512 U.S. 821 (1994), in which the court held that a $52 million fine, characterized by the state court as a civil sanction (and which had been announced in advance of the contempt) was sufficiently serious to be characterized as "punitive in nature" and thus to require the opportunity for a jury to determine issues of disputed material fact. *Bagwell* calls into question the distinction between civil and criminal contempt, 512 U.S. at 827, N.3, and bases its decision upon the seriousness of the sanction and the need in such case for an impartial fact finder, *id.*, at 831-32, 834,[8] rather than nomenclature. The *Bagwell* court was not confronted with the question of when to deem a deprivation of liberty to be sufficiently serious to require the opportunity for a jury trial, but its general endorsement of the principle that a jury trial must be offered when the potential sanction is "serious" clearly indicates that the Sixth Amendment applies in situations where a serious deprivation

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[8] Although *Bagwell* clearly indicated that it was dealing with due process that should be afforded in a civil context (*id.* at 831), a number of lower federal courts have interpreted *Bagwell* as applicable only to contempts traditionally characterized a "criminal." *American Airlines, Inc. v. Allied Pilots Association*, 228 F.3d 574, 583 (5th Cir. 2000); *N.Y.N.O.W. v. Terry*, 159 F.3d 86, 93 (2nd Cir. 1798); *Mackler Productions Inc. v. Cohen*, 146 F.3d 126, 129 (2nd Cir. 1998); *Harris v. City of Philadelphia*, 47 F.3d 1311, 1329 (3rd Cir. 1995); *Grove Fresh Distributors, Inc. v. John Labatt, Ltd.*, 888 F. Supp. 1427, 1436, n. 8-9 (N.D. Ill. 1995). The reluctance of lower federal courts to apply the holding of *Bagwell* suggests that this Court should make clear that due process now requires a jury trial in all cases where a serious sanction is imposed and a material fact issue must be decided.

of liberty is reasonably foreseeable.

It is clear, moreover, that imprisonment for more than six months generally is regarded as a serious sanction. Although a "serious" deprivation of liberty is not quantified in *Bagwell,* the *Bagwell* court cited another case involving a six-month incarceration to illustrate what it considered to be such a "serious" deprivation. The case cited by the *Bagwell* court, at 512 U.S. 837, n. 5, was *Muniz v. Hoffman*, 422 U.S. 454, 477 (1975), which held that six months in jail is a serious matter for any individual. *Cf. Cheff v. Schnackenberg*, supra, and *Blanton v. North Las Vegas*, 489 U.S. 538, 541 (1989), both holding that six months' imprisonment divides petty and serious sanctions.

Since the imprisonment order in the instant case is unconditional, the imprisonment here should, for that reason alone, be considered punitive or criminal. *Gompers v. Bucks Stove & Range Co.*, 221 U.S. 418, 442-53 (1911) (12 month sentence for violation of a labor injunction had no coercive force and was punitive). Accordingly, *Bloom* requires that Mr. Chadwick be accorded a jury trial, since the order effecting his imprisonment did not meet the exception for a conditional order in *Shillitani*.

Although the imprisonment order has not been amended to add a condition, the lower courts have treated it as containing a condition that release is conditioned upon performance of the order underlying the contempt – to deposit $2.5 million in cash with the court. Even if such a condition is implied, the eight year imprisonment is a serious sanction as to which a jury trial is required under *Bagwell,* and also on the basis of *Amicus'* preceding argument concerning the availability of Eighth Amendment protections.

Like *Bloom* (from which it quoted with approval), the

Bagwell court was concerned that because contempt "often strikes at the most vulnerable and human qualities of a judge's temperament," 512 U.S. 831, "an even more compelling argument can be made for providing a right to jury trial as a protection against the arbitrary exercise of official power." Citing to *Bloom*, 391 U.S. at 202. Thus, both *Bloom*, in providing for jury trials for serious criminal contempts, and *Bagwell*, in providing for jury trials for all serious sanctions for contempt without regard to the label applied by the sanctioning court, relied upon the same due process rationale: to make certain that impartial fact-finding was provided for, and to insure that the label applied by the sanctioning court, whether "civil" or "criminal", makes no difference in the due process guarantee against arbitrary power.

Nowhere is it more important to safeguard this guarantee than in the preservation of the right to a jury trial before causing a person to suffer serious imprisonment, as the court recently recognized in another context, acknowledging the right to a jury trial as to matters affecting the length of sentence. *Apprendi v. New Jersey*, 530 U.S. 466 (2000).

E. CONCLUSION.

Common wisdom teaches that persons ordered by a court to perform or refrain from performing an act cannot be permitted to ignore such an order. There comes a time, however, when continued imposition of a contempt sanction is so excessive as to become a disservice to the court, by undermining the court's *moral* authority. We believe that a court must retain its moral authority.

Here, it may well be that Mr. Chadwick has indeed refused for all these years to comply with the State court's

order while being fully able to do so. But the court's determination that he has that ability and that continued confinement will eventually procure the desired compliance has become profoundly suspect, and, even if the determination was correct when made by the State court, the passage of eight years has transformed Mr. Chadwick into a victim. A victim of his own recalcitrance, all of the reviewing courts have concluded, but a victim also of the sanctioning court's misperception of his amenability to coercion. And now he has suffered a sanction that is seriously disproportionate to the avowed purpose of that sanction, and seriously disproportionate to the procedural protections – or, in truth, the *lack* of procedural protections – that to date have been afforded him.

We believe Mr. Chadwick's confinement long ago exceeded the outer limits of coercion and thus became punitive, and unsupported by rational application of pertinent law. We believe his confinement also has exceeded the bounds of appropriate criminal punishment for deliberate defiance of the State court's order.

Mr. Chadwick should be released immediately.

Respectfully submitted,

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IN THE SUPREME COURT OF THE UNITED STATES

H. BEATTY CHADWICK,

Petitioner

V. Docket No.: _____

BARBARA JEAN CROWTHER CHADWICK,

Respondent

ooOoo

CONSENT OF RESPONDENT, THROUGH COUNSEL, TO FILING OF *AMICUS CURIAE* BRIEF BY A MATTER OF JUSTICE EDUCATIONAL FOUNDATION

Respondent, through her undersigned counsel, hereby consents to the filing of an *amicus curiae* brief by A Matter of Justice Educational Foundation, a 501 (c) (3) non-profit association dedicated to judicial reform.

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IN THE UNITED STATES SUPREME COURT

H. BEATTY CHADWICK,

Petitioner,

V. Docket No.: 02-1346

BARBARA JEAN CROWTHER CHADWICK,

Respondent.

ooOoo

PETITIONER'S CONSENT TO FILING OF *AMICUS* BRIEF BY A MATTER OF JUSTICE EDUCATIONAL FOUNDATION IN SUPPORT OF HIS PETITION FOR A *WRIT OF HABEAS CORPUS*

Petitioner, H. Beatty Chadwick, CONSENTS to the filing of an *amicus* brief by A Matter of Justice Educational Foundation in support of his Petition for a *Writ of Habeas Corpus*.

H Beatty Chadwick

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